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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV98–997–1 FIR and FV98–998–1 FIR]

Domestically Produced Peanuts; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the administrative assessment rate established for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (Agreement) for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton of assessable peanuts. Authorization to assess peanut handlers who have signed the Agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. The Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Act). The Act also requires the Department to impose the same administrative assessment rate on assessable peanuts received or acquired by handlers who have not signed the Agreement. The 1998–1999 crop year covers the period July 1 through June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Wendland or George J. Kelhart, 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, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with marketing agreements and orders for fruits, vegetables, and speciality crops, by contacting Jay Guerber, also at the above address, telephone, and fax number, or E-mail: Jay__N__Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereafter referred to as the ''Act'', under Marketing Agreement No. 146 (7 CFR part 998), and under the Peanut Non-Signer Program (7 CFR part 997). The marketing agreement and non-signer program, and the regulations issued thereunder regulate the quality of domestically produced peanuts.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Farmers stock peanuts received or acquired by non-signatory handlers and farmers stock peanuts received or acquired by handlers signatory to the Agreement, other than from those described in § 998.31(c) and (d), are subject to the same assessment rate. It is intended that the assessment rates finalized herein will be applicable to all assessable peanuts beginning July 1, 1998, and continue in effect until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule continues the decreased assessment rate established for the Committee and non-signer handlers for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton of assessable peanuts.

The Agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the Agreement program are paid to the Committee and are derived from signatory handler assessments. The Committee members include nine handlers and nine producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services in their local areas, and thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have voluntarily signed the Agreement authorizing the expenses that may be incurred and the imposition of assessments.

For the 1996–97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year indefinitely unless modified, suspended, or terminated by the Secretary, upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 27, 1998, and unanimously recommended for 1998–99 a reduction in the administrative assessment rate from $0.35 to $0.33 per net ton of assessable peanuts, and administrative expenditures of $495,000. In comparison, last year's budgeted administrative expenditures were $525,000. The assessment rate of $0.33 is $0.02 lower than the rate previously in effect.

Major expenditures approved for the Committee for the 1998–99 crop year compared with those budgeted for 1997–98 (in parentheses) include: $58,000 for executive salaries ($55,000), $43,500 for clerical salaries ($50,000), $129,000 for compliance officers salaries ($125,000), $19,000 for payroll taxes ($18,000), $70,000 for employee benefits ($65,000), $40,000 for committee members travel ($40,000), $55,000 for compliance officers travel ($60,000), $13,000 for office rent ($19,000), and $10,400 for the audit fee ($10,400).

The Committee had discussed alternatives to this rule, including alternative expenditure levels but decided that each of the budgeted expenses was reasonable and appropriate. It had also discussed the

alternative of not decreasing the assessment rate but decided it needed to decrease the rate to reduce handlers' costs as much as possible. The Committee had also discussed an even lower rate, but decided that an assessment rate of less than $0.33 would not generate the income necessary to administer the program.

The assessment rate approved for the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers stock peanuts. Farmers stock peanuts received or acquired by handlers signatory to the Agreement, other than those peanuts described in § 998.31(c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers stock peanuts are received or acquired by signatory handlers. Peanut receipts and acquisitions for the year under the Agreement are estimated at 1,500,000 tons, which should provide $495,000 in assessment income. Approximately 95 percent of the domestically produced peanut crop is handled by handlers who signed the Agreement. The remaining 5 percent is handled by non-signer handlers.

The Act provides for the mandatory assessment of farmers stock peanuts acquired by non-signatory peanut handlers. Section 608b of the Act specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement with signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary. Thus, the assessment rate of $0.33 per net ton of assessable peanuts also applies to non-signatory handlers of domestic peanuts.

The assessment rates finalized in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate for signatory handlers. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget has been approved and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing agreements and 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 80 peanut handlers who are subject to regulation under the Agreement or the non-signer program and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, are 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. Approximately 25 percent of the signatory handlers, virtually all of the non-signer handlers, and most of the producers may be classified as small entities.

This rule continues the decreased assessment rate established for the Committee (as it unanimously recommended) to be collected from handlers for the 1998–99 and subsequent crop years from $0.35 to $0.33 per net ton. The rate is $0.02 less than the 1997–98 rate.

The Committee had discussed alternatives to this rule, including alternative expenditure levels but unanimously voted that each of the budgeted expenses was reasonable and appropriate. It had also discussed the alternative of not decreasing the assessment rate. However, it had decided against this course of action. The peanut industry has been in a state of economic decline since 1991, with the Committee attempting to cut costs where possible. The Committee's approved budget for 1998–99 is $495,000, or $30,000 less than the amount budgeted for 1997–98. Based on an estimated 1,500,000 net tons of assessable peanuts, income derived from handler assessments during 1998–99 will be adequate to cover budgeted expenses.

Major expenditures approved for the Committee for the 1998–99 crop year compared with those budgeted for 1997–98 (in parentheses) include: $58,000 for executive salaries ($55,000), $43,500 for clerical salaries ($50,000), $129,000 for compliance officers salaries ($125,000), $19,000 for payroll taxes ($18,000), $70,000 for employee benefits ($65,000), $40,000 for committee members travel ($40,000), $55,000 for compliance officers travel ($60,000), $13,000 for office rent ($19,000), and $10,400 for the audit fee ($10,400).

The Committee had reviewed historical information and information pertaining to the 1998–99 crop year. The Department expects the area for harvest to total 1.48 million acres of peanuts for the 1998 crop. The Committee projected shipments for the 1998–99 crop year to be 1.5 million net tons. Based on 1997–98 crop figures, the approximately $560,000 in total assessments collected by the Committee as a percentage of the $932,000,000 total peanut crop value was only 0.0006 percent. With a decreased assessment rate, the relationship of total assessment cost as a percentage of total crop value is expected to be even smaller for the 1998–99 crop.

This action finalizes the decreased administrative assessment obligation imposed on all domestic peanut handlers, whether signers or non-signers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the decreased assessment rate reduces the burden on handlers, and may reduce the burden on producers. Also, the reduced burdens are offset by the benefits derived from the operations of the Agreement and the non-signer programs. In addition, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in deliberations on all issues. Like all Committee meetings, the May 27, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses and none were received.

This action will not impose any additional reporting or recordkeeping requirements on either small or large

peanut handlers. As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 3, 1998 (63 FR 41182). Copies of that rule were mailed by the Committee's staff to all Committee members and peanut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended October 2, 1998, and no comments were received.

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

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published at 63 FR 41182 on August 3, 1998, is adopted as a final rule without change.

Dated: October 23, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–28972 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA–98–05]

Dairy Promotion and Research Order; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends a provision of the Dairy Promotion and Research Order (Order). The amendment, requested by the National Dairy Promotion and Research Board (Board), which administers the Order, modifies the number of members from geographic regions in accordance with the provisions of the Order in order to best reflect the geographic distribution of milk production volume in the United States.

EFFECTIVE DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250–0233, (202) 720–6909, E-Mail address: David__Jamison@usda.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the dairy industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 99,413 dairy farmers subject to the provisions of the Order. Most of the parties subject to the Order are considered small entities.

The Order (7 CFR Part 1150) is authorized under the Dairy and Tobacco Adjustment Act of 1983 (Act), as amended (7 U.S.C. 4501–4513). This rule will modify a provision of the Order by adjusting the number of members representing four geographic regions on the Board to reflect the volume of milk produced within the specified regions. This amendment was requested by the Board to fulfill certain requirements of the Order.

Currently, the Order provides for a 36-member board with members representing 13 geographic regions. Section 1150.131(c) states that the Board is required at least every five years, and not more than every three years, to review the geographic distribution of milk production volume throughout the United States and if necessary recommend modification of regional representation. The last modification was made in 1994. Section 1150.131(d) of the Order specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country designated in the Order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1994 based on the 1992 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1997, total milk production increased to 156,464 million pounds which indicated that each of the Board members would represent 4,346 million pounds of milk.

Based on a review of the 1997 geographic distribution of milk production, the Board has concluded that the number of Board members for four of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 27,628 million pounds in 1997 up from 22,084 million pounds in 1992, indicating 6.36 Board members based on 1997 production (27,628 divided by 4,346 = 6.36) compared to 5.24 Board members based on 1992 production (22,084 divided by 4,211 = 5.24). Also, milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased to 11,929 million pounds in 1997 up from 8,470 in 1992, indicating 2.74 Board members based on 1997 production (11,929 divided by 4,346 = 2.74) compared to 2.01 Board members based on 1992 production (8,470 divided by 4,211 = 2.01). Milk production in Region 6 (Wisconsin) decreased to 22,368 million pounds in 1997 from 24,103 million pounds in 1992, indicating 5.15 Board members based on 1997 production (22,368 divided by 4,346 = 5.15) compared to 5.72 Board members based on 1992 production (24,103 divided by 4,211 = 5.72). Also, milk production in Region 7 (Illinois, Iowa, Missouri, and Nebraska) decreased to 9,699 million pounds from 11,168 million pounds in 1992, indicating 2.23 Board members based on 1997 production (9,699 divided by

4,346 = 2.23) compared to 2.65 Board members based on 1992 production (11,168 divided by 4,211 = 2.65). Thus, the Board proposed that the number of Board members from Region 2 be increased from five to six, that the number of Board members from Region 3 be increased from two to three, that the number of Board members from Region 6 be decreased from six to five, and that the number of Board members from Region 7 be decreased from three to two so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

This amendment to the Order will not add any burden to regulated parties because they relate to provisions concerning membership of the Board. The amendment will not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendment to the Order: Issued September 16, 1998; published September 21, 1998 (63 FR 50172).

Executive Order 12866 and the Paperwork Reduction Act

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118 of the Act, any person subject to the 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 the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a 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 person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee background information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

This final rule amends a provision of the Order by adjusting the number of members representing four regions on the Board to best reflect the geographic distribution of milk production volume throughout the United States. Specifically, the number of Board members from Region 2 (California) will increase from five to six; the number of Board members from Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) will increase from two to three; the number of Board members from Region 6 (Wisconsin) will decrease from six to five; and the number of Board members from Region 7 (Illinois, Iowa, Missouri, and Nebraska) will decrease from three to two. With the adjustments in regional representation, the Board continues to have 36 members representing 13 geographic regions, as is provided in Section 1150.131(a) of the Order.

Notice of proposed rulemaking was given to interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this proposed rule. Two comments were received, representing a dairy management organization and a producer organization. Both comments favored the proposed change.

Dairy Management Inc. (DMI) supported a timely modification to the number of members in four geographical regions to better reflect actual milk production in those specified regions. The Idaho Dairy Products Commission also supported the proposed change.

Section 1150.131 (c) of the Order requires the Board to review the geographic distribution of milk production volume throughout the United States and, if warranted, to recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

Section 1150.131(d) of the Order specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country designated in the Order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region.

The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1994 based on the 1992 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1997, total milk production increased to 156,464 million pounds which indicated that each of the Board members would represent 4,346 million pounds of milk.

Based on a review of the 1997 geographic distribution of milk production, the Board concluded that the number of Board members for four of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 27,628 million pounds in 1997 up from 22,084 million pounds in 1992, indicating 6.36 Board members based on 1997 production (27,628 divided by 4,346 = 6.36) compared to 5.24 Board members based on 1992 production (22,084 divided by 4,211 = 5.24). Also, milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased to 11,929 million pounds in 1997 up from 8,470 in 1992, indicating 2.74 Board members based on 1997 production (11,929 divided by 4,346 = 2.74) compared to 2.01 Board members based on 1992 production (8,470 divided by 4,211 = 2.01). Milk production in Region 6 (Wisconsin) decreased to 22,368 million pounds in 1997 from 24,103 million pounds in 1992, indicating 5.15 Board members based on 1997 production (22,368 divided by 4,346 = 5.15) compared to 5.72 Board members based on 1992 production (24,103 divided by 4,211 = 5.72). Also, milk production in Region 7 (Illinois, Iowa, Missouri, and Nebraska) decreased to 9,699 million pounds from 11,168 million pounds in 1992, indicating 2.23 Board members based on 1997 production (9,699 divided by 4,346 = 2.23) compared to 2.65 Board members based on 1992

production (11,168 divided by 4,211 = 2.65).

Accordingly, it is appropriate to adjust the number of Board members for four of the 13 regions: increasing Region 2 from five to six members; increasing Region 3 from two to three; decreasing Region 6 from six to five; and decreasing Region 7 from three to two members. With the member adjustments, the Board will best reflect the most recently available geographic distribution of milk production volume throughout the United States.

It is appropriate to make this final rule effective one day after the date of publication in the **Federal Register**. To allow the appointment of new Board members based on the redistribution, this amendment should be effective before the Secretary of the United States Department of Agriculture makes appointments to fill positions on the Board. Because terms of the existing Board members expire October 31, 1998, these positions should be appointed as soon as possible.

Therefore, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**. The proposed amendment to the order is made final in this action.

List of Subjects in 7 CFR Part 1150

Dairy products, reporting and recordkeeping requirements, rsearch.

For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

PART 1150—NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

2. In § 1150.131, paragraphs (a)(2), (a)(3), (a)(6), and (a)(7) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

National Dairy Promotion and Research Order—Final Rule

(2) Six members from region number two comprised of the following State: California.

(3) Three members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming.

* * * * *

(6) Five members from region number six comprised of the following State: Wisconsin.

(7) Two members from region number seven comprised of the following States: Illinois, Iowa, Missouri, and Nebraska.

* * * * *

Dated: October 26, 1998.

Isi A. Siddiqui,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 98–29110 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–09–AD; Amendment 39–10864; AD 97–01–01 R1]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–24, PA–28R, PA–30, PA–32R, PA–34, and PA–39 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises AirworthinessDirective (AD) 97–01–01, which currently requires repetitively inspecting the main gear sidebrace studs for cracks on The New Piper Aircraft, Inc. (Piper)Models PA–24, PA–28R, PA–30, PA–32R, PA–34, and PA–39 series airplanes, and replacing any main gear sidebrace stud found cracked. The Federal Aviation Administration (FAA) has approved certain alternative methods of compliance (AMOC) for AD 97–01–01, and has determined that these AMOC's should be incorporated into the AD. This AD will retain all the actions of AD 97–01–01, and will incorporate certain AMOC's as a way of accomplishing the actions specified in AD 97–01–01. The actions specified by this AD are intended to prevent a main landing gear collapse caused by main gear sidebrace stud cracks, which could result in loss of control of the airplane during landing operations.

EFFECTIVE DATE: December 8, 1998.

ADDRESSES: This information may also be examined at the Federal Aviation Administration (FAA), Central Region,Office of the Regional Counsel, Attention: RulesDocket No. 96–CE–09–AD, Room 1558, 601 E. 12th Street,Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Certification Office, One Crown Center,1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA–24, PA–28R, PA–30, PA–32R, PA–34, and PA–39 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 22, 1998 (63 FR 28294). The NPRM proposed to supersede AD 97–01–01, Amendment 39–9872 (62 FR 10, January 2, 1997), which currently requires repetitively inspecting the main gear sidebrace studs for cracks on the above-referenced airplanes, and replacing any main gear sidebrace stud found cracked. The NPRM proposed to retain all the actions of AD 97–01–01, and incorporate certain alternative methods of compliance (AMOC's) as a way of accomplishing the actions specified in AD 97–01–01.

The NPRM was the result of the FAA approving AMOC's for modifying the existing bracket assembly as terminating action for the repetitive inspection requirement of that AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The cost impact of this AD will be the same as is currently required by AD 97–01–01. As a courtesy, the FAA is reprinting that cost information in the following paragraphs.

The FAA estimates that 13,200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on

these figures, the total cost impact of the inspection on U.S. operators is estimated to be $3,960,000. This figure represents the total cost of the initial inspection, and does not reflect costs for any of the repetitive inspections or possible replacements. TheFAA has no way of determining how many main gear side brace studs may need replacement or how many repetitive inspections each owner/operator may incur over the life of the airplane.

In addition, this AD will require the same inspections required by AD 95–20–07 (which was superseded by AD 97–01–01). The only difference between this AD and AD 95–20–07 is the addition of an inspection-terminating modification option and the elimination of (from the ''Applicability'' section of the AD) certain airplanes that incorporate a certain main side brace stud assembly. This AD will also not provide any additional cost impacts over that already required by AD 95–20–07.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 97–01–01, Amendment 39–9872 (62 FR 10, January 2, 1997), and by adding a new AD to read as follows:

97–01–01 R1 The New Piper Aircraft, Inc.: Amendment 39–10864; Docket No. 96–CE–09–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

1. All serial numbers of Models PA–24, PA–24–250, PA–24–260, PA–24–400, PA–30, and PA–39 airplanes;

2. The following model and serial number airplanes that are not equipped with a Piper part number (P/N) 78717–02 (or FAA-approved equivalent part number) main gear sidebrace stud in both right and left main gear sidebrace bracket assemblies:

Model	Serial numbers
PA–28R–180.	28R–30002 through 28R–31135, and 28R–7130001 through 28R–7130013.
PA–28R–200.	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7635539.
PA–28R–201.	28R–7737002 through 28R–7737096.
PA–28R–201T.	28R–7703001 through 28R–7703239.
PA–32R–300.	32R–7680001 through 32R–7780444.
PA–34–200.	all serial numbers.
PA–34–200T.	34–7570001 through 34–7770372.

Note 1: P/N 78717–02 sidebrace stud was installed at manufacture on Piper Model PA–34–200T airplanes, serial numbers 34–7670325 through 34–7770372.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially as follows, and thereafter as specified in the body of this AD:

1. *For the affected Models PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–32R–300, PA–34–200, and PA–34–200T airplanes:* Within the next 100 hours time-in-service (TIS) after the effective date of this AD; or, if the main gear sidebrace stud has already been inspected or replaced as specified in this AD, within 500 hours TIS after the last inspection or replacement; whichever occurs later.

2. *For the affected Models PA–24, PA–24–250, PA–24–260, PA–24–400, PA–30, and PA–39 airplanes:* Within the next 100 hours TIS after the effective date of this AD; or, if the main gear sidebrace stud has already been inspected or replaced as specified in this AD, within 1,000 hours TIS after the last inspection or replacement; whichever occurs later.

To prevent main landing gear (MLG) collapse caused by main gear sidebrace stud cracks, which could result in loss of control of the airplane during landing operations, accomplish the following:

Note 3: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) Remove both the left and right main gear sidebrace studs from the airplane in accordance with the instructions contained in the Landing Gear section of the maintenance manual, and inspect each main gear sidebrace stud for cracks, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Figure 1 of this AD depicts the area of the sidebrace stud shank where the sidebrace stud is to be inspected.

Note 4: All affected Models PA–24 and PA–24–250 airplanes were equipped at manufacture with P/N 20829–00 main gear sidebrace studs. All affected Models PA–24–260, PA–24–400, PA–30, and PA–39 airplanes were equipped at manufacture with P/N 22512–00 main gear sidebrace studs. The Appendix included with this AD contains information on determining the P/N of the bracket assembly (which contains the main gear side brace stud) on the affected PA–28R, PA–32R, and PA–34 series airplanes.

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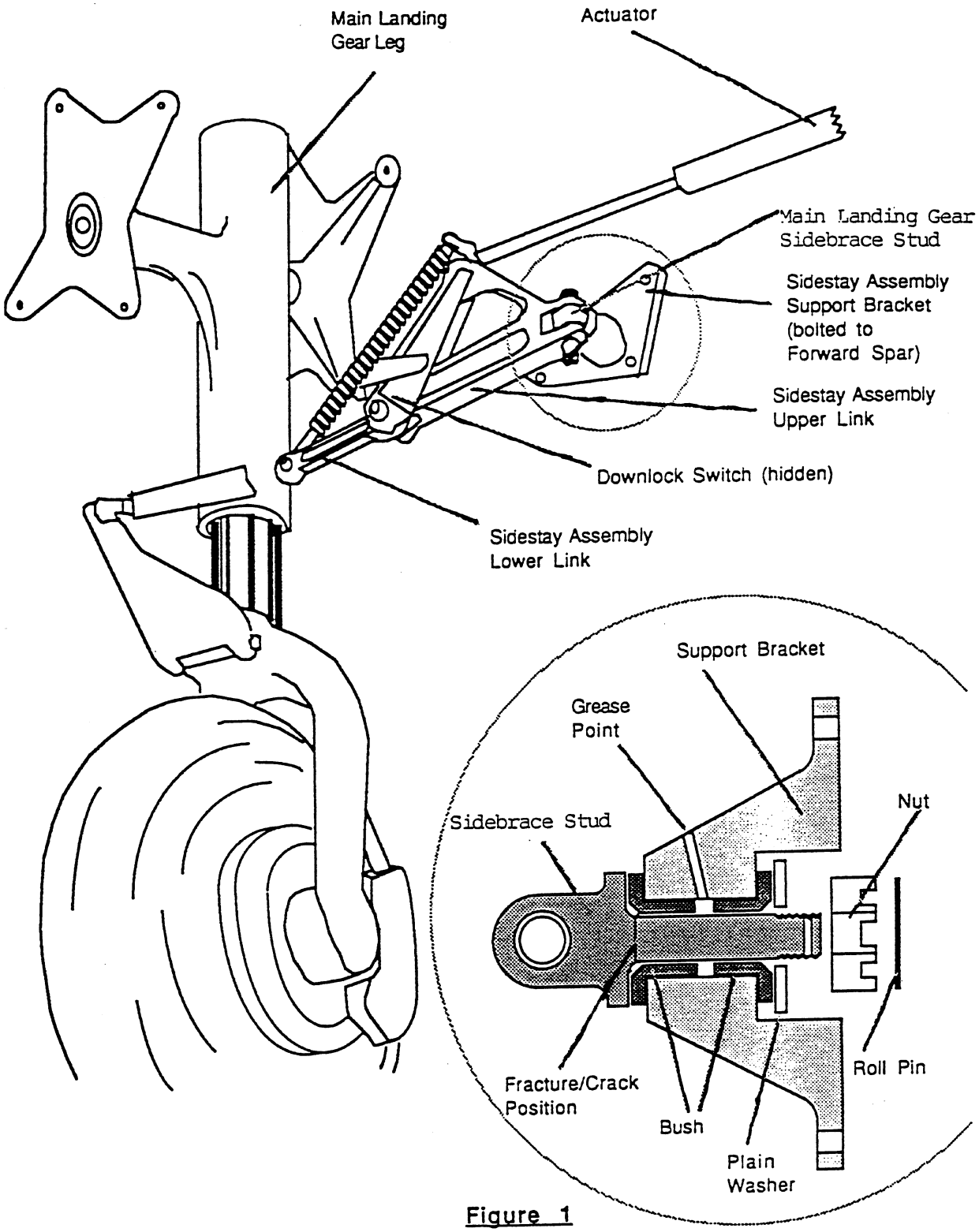

Figure 1

Note: This figure is provided to depict the area of the sidebrace stud to be inspected. This is not intended to represent the configuration of all models affected.

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(1) For any main gear sidebrace stud found cracked, prior to further flight, replace the cracked stud with an FAA-approved serviceable part (part numbers referenced in the table in paragraph (b) of this AD or FAA-approved equivalent part number) in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and accomplish one of the following, as applicable:

(i) Reinspect (and replace as necessary) as specified in paragraph (b) of this AD; or

(ii) For the affected Models PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–32R–300, PA–34–200, and PA–34–200T airplanes, the 9/16-inch main gear sidebrace studs (P/N 95299–00, 95299–02, or P/N 67543, as applicable) are no longer manufactured. Install a new main gear sidebrace stud bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable. No repetitive inspections will be required by this AD for these affected airplane models when this bracket assembly is installed on both the left and right sides; or

(iii) For the affected Models PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–32R–300, PA–34–200, and PA–34–200T airplanes, ream the existing two-piece bushings to an inside diameter of .624-inch to .625-inch, chamfer the head side of the bushing to accommodate the radius in the shank of the main gear sidebrace stud, and install the 5/8-inch stud, P/N 78717–02. No repetitive inspections will be required by this AD when this action is accomplished on both the left and right bracket assemblies. If the bushings cannot be reamed while installed in the bracket (i.e., the bushings are loose), then install a main gear sidebrace bracket assembly, P/N 95643–06, P/N 95643–07, P/N 95643–08, or P/N 95643–09, as applicable. Models PA–28R–180 and PA–28R–200 with serial numbers as specified in the Appendix to this AD may be equipped with a bracket casting identified with casting number 67073–2 or 67073–3 and may require the following modification to P/N 78717–02 for proper installation:

(A) Reduce the length of the stud to 1.688 ± 0.15 inches;

(B) Add additional rolled threads to 1.125 ± .015 inches from the flange. Note that the stud is heat treated to 180 to 200 ksi; and

(C) Drill an additional roll pin hole 90 degrees to the existing hole, and approximately 1.480 inches from the flange.

(iv) No repetitive inspections will be required by this AD when a P/N 78717–02 (or FAA-approved equivalent part number) main gear sidebrace stud is installed in the existing bracket assembly on both the left and right sides; or when a bracket assembly, P/N 95643–06 (or FAA-approved equivalent part number), P/N 95643–07 (or FAA-approved equivalent part number), P/N 95643–08 (or FAA-approved equivalent part number), or P/N95643–09 (or FAA-approved equivalent part number), as applicable, is installed on both the left and right sides.

(2) For any main gear sidebrace stud not found cracked, prior to further flight, reinstall the uncracked stud in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect and replace (as necessary) as specified in paragraph (b) of this AD.

(b) Reinspect both the left and right main gear sidebrace studs, using Type I (fluorescent) liquid penetrant or magnetic particle inspection methods. Replace any cracked stud or reinstall any uncracked stud as specified in paragraphs (a)(1) and (a)(2) of this AD, respectively:

Part number installed	TIS inspection Interval (hours)	Model airplanes Installed on
20829–00 (Piper parts) or FAA-approved equivalent part number.	1,000	PA–24 and PA–24–250.
22512–00 (Piper parts) or FAA-approved equivalent part number.	1,000	PA–24–260, PA–24–400, PA–30, and PA–39.
95299–00 or 95299–02 (Piper parts) or FAA-approved equivalent part number.	500	PA–28R–180 and PA–28R–200 not equipped with casting number 67073–2 or 67073–3, PA–28R–201, PA–28R–201T, PA–32R–300, PA–34–200, and PA–34–200T.
67543 (Piper parts) or FAA-approved equivalent part number ..	500	PA–28R–180 and PA–28R–200 equipped with casting number 67073–02 or 67073–03.

NOTE 5: Accomplishing the actions of this AD does not affect the requirements of AD 77–13–21, Amendment 39–3093. The tolerance inspection requirements of that AD still apply for Piper PA–24, PA–30, and PA–39 series airplanes.

(c) Owners/operators of the affected Models PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–32R–300, PA–34–200, and PA–34–200T airplanes may accomplish one of the following at any time to terminate the repetitive inspection requirement of this AD:

(1) Install a main gear sidebrace bracket assembly, P/N 95643–06 (or FAA-approved equivalent part number), P/N 95643–07 (or FAA-approved equivalent part number), P/N 95643–08 (or FAA-approved equivalent part number), or P/N 95643–09 (or FAA-approved equivalent part number), as applicable, which contains the ⅝-inch diameter main gear sidebrace stud, P/N 78717–02 (or FAA-approved equivalent part number), and the one-piece bushing, P/N 67026–12 (or FAA-approved equivalent part number). Accomplish these installations in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual; or

(2) Ream the existing two-piece bushings to an inside diameter of .624-inch to .625-inch, chamfer the head side of the bushing to accommodate the radius in the shank of the main gear sidebrace stud, and install the 5/8-inch stud, P/N 78717–02 (or FAA-approved equivalent part number). No repetitive inspections will be required by this AD when this action is accomplished on both the left and right bracket assemblies. If the bushings cannot be reamed while installed in the bracket (i.e., the bushings are loose), then install a main gear sidebrace bracket assembly, P/N 95643–06 (or FAA-approved equivalent part number), P/N 95643–07 (or FAA-approved equivalent part number), P/N 95643–08 (or FAA-approved equivalent part number), or P/N 95643–09 (or FAA-approved equivalent part number), as applicable. Models PA–28R–180 and PA–28R–200 with serial numbers as specified in the Appendix to this AD may be equipped with a bracket casting identified with casting number 67073–2 or 67073–3 and may require the following modification to P/N 78717–02 (or FAA-approved equivalent part number) for proper installation:

(i) Reduce the length of the stud to 1.688 ± 0.15 inches;

(ii) Add additional rolled threads to 1.125 ± .015 inches from the flange. Note that the stud is heat treated to 180 to 200 ksi; and

(iii) Drill an additional roll pin hole 90 degrees to the existing hole, and approximately 1.480 inches from the flange.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 97–01–01, Amendment 39–9872 (revised by this action), or AD 95–20–07, Amendment 39–9386 (superseded by AD 97–01–01), are considered approved as alternative methods of compliance with this AD.

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

(f) Information related to this AD may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment revises AD 97–01–01, Amendment 39–9872, which superseded AD 95–20–07, Amendment 39–9386.

(h) This amendment becomes effective on December 8, 1998.

Appendix to AD 97–01–01 R1; Amendment No. 39–10864; Docket No. 96–CE–09–AD Information to Determine Main Gear Sidebrace Stud Assembly Part Number (P/N)

—The P/N 95643–00/–01/–02/–03 bracket assembly contains the 9/16-inch diameter main gear sidebrace stud, P/N 95299–00/–02, and a two-piece bushing, P/N 67026–6.

—The P/N 95643–06/–07/–08/–09 bracket assembly contains the 5/8-inch diameter main gear sidebrace stud, P/N 78717–02, and a one-piece bushing, P/N 67026–12.

—Both the one-piece and the two-piece bushing have a visible portion of the bushing flange, i.e., bushing shoulder.

—Whether a one-piece or two-piece bushing is installed may be determined by measuring the outside diameter of the bushing flange with a micrometer (jaws of the caliper must be 3/32-inch or less). The two-piece bushing will have an outside diameter of 1.00 inch and the one-piece bushing will have an outside diameter of 1.128 to 1.130 inches. This measurement is not valid for the following airplanes:

Model	Serial numbers
PA–28R–180.	28R–30004 through 28–31270.
PA–28R–200.	28R–35001 through 28R–35820, and 28R–7135001 through 28R–7135062.

The main gear sidebrace studs on these airplanes will require removal to determine the P/N installed.

—The one-piece bushing contains a visible chamfer in the center of the bushing, and the chamfer in the two-piece bushing is not visible when the stud is installed.

—If P/N 95643–00/–01/–02/–03 bracket assembly is installed or the above information cannot be utilized, the main gear sidebrace stud will need to be removed from the bracket to determine the shank diameter and main gear sidebrace stud P/N.

—P/N 95299–00 and P/N 95299–02 main gear sidebrace studs are 9/16-inch in diameter.

—P/N 78717–00 main gear sidebrace studs are 5/8-inch in diameter.

—P/N 95643–00/–01/–02/–03 bracket assembly may have been modified to accommodate the 5/8-inch diameter main gear sidebrace stud, P/N 78717–02.

—The embossed number of 95363 on the bracket forging is not the bracket assembly P/N.

—The bracket assemblies identified with casting number 67073–2 or 67073–3 contain a 9/16-inch diameter main gear sidebrace stud, P/N 67543, and two-piece bushing, P/N 67026–2 and 67026–3.

—Model PA–28R–180 airplanes, serial numbers 28R–30004 through 28R–31270; and Model PA–28R–200 airplanes, serial numbers 28R–35001 through 28R–35820 and 28R–7135001 through 28R–7135062, are equipped from the factory with bracket assemblies identified with casting number 67073–2 and 67073–3.

—P/N 67543 main gear sidebrace studs are 9/16-inch in diameter.

Issued in Kansas City, Missouri, on October 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–29003 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29371; Amdt. No. 412]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and a safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significiant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on October 22, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is

amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

PART 95—[AMENDED]

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 412 Effective Date, December 3, 1998]

From	To	MEA
§ 95.1001 DIRECT ROUTES—U.S.		
§ 95.104 AMBER FEDERAL AIRWAY 4 IS AMENDED TO READ IN PART		
EVANSVILLE, AK NDB *8300—MOCA	ANAKTUVUK PASS, AK NDB	*10000
IS AMENDED TO DELETE		
UMIAT, AK NDB	PUT RIVER, AK NDB	3000
§ 95.106 AMBER FEDERAL AIRWAY 6 IS DELETED		
CHANDALAR LAKE, AK NDB	UMIAT, AK NDB	10000
UMIAT, AK NDB	BROWERVILLE, AK NDB	3000
§ 95.1001 DIRECT ROUTES—U.S. IS AMENDED TO READ IN PART		
PHIPS, FL FIX DCT VIA 1500 FLOOR. PFN VORTAC R–284. *1500—MOCA MAA—17500	DESTN, FL FIX	*3000
§ 95.6002 VOR FEDERAL AIRWAY 2 IS AMENDED TO READ IN PART		
BUFFALO, NY VOR/DME *2400—MOCA	ROCHESTER, NY VORTAC	*6000
ROCHESTER, NY VORTAC	LORTH, NY FIX	2500
LORTH, NY FIX *1800—MOCA	MAGEN, NY FIX	*3500
MAGEN, NY FIX *3000—MRA **1900—MOCA	*KONDO, NY FIX	**2400
KONDO, NY FIX *3000—MRA **1900—MOCA	*WIFFY, NY FIX	**2400
WIFFY, NY FIX	SYRACUSE, NY VORTAC	2400
SYRACUSE, NY VORTAC	STODA, NY FIX	2400
STODA, NY FIX	VASTS, NY FIX	3000
VASTS, NY FIX	UTICA, NY VORTAC	3400
UTICA, NY VORTAC	MARIA, NY FIX	3500
§ 95.6006 VOR FEDERAL AIRWAY 6 IS AMENDED TO READ IN PART		
*NILES, IL FIX *3500—MRA **2000—MOCA	CHETT, MI FIX	**3500
CHETT, MI FIX *2400—MOCA	GIPPER, MI VORTAC	*3000
§ 95.6010 VOR FEDERAL AIRWAY 10 IS AMENDED TO READ IN PART		
*NILES, IL FIX *3500—MRA **2000—MOCA	CHETT, MI FIX	**3500
CHETT, MI FIX *2400—MOCA	GIPPER, MI VORTAC	*3000
§ 95.6017 VOR FEDERAL AIRWAY 17 IS AMENDED TO READ IN PART		
SAN ANTONIO, TX VORTAC *3000—MOCA	CENTEX, TX VORTAC	*3500
CENTEX, TX VORTAC	WACO, TX VORTAC	3500
§ 95.6018 VOR FEDERAL AIRWAY 18 IS AMENDED TO READ IN PART		
GUTHRIE, TX VORTAC	BEKLE, TX FIX	*6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 412 Effective Date, December 3, 1998]

From	To	MEA
*3300—MOCA		
BEKLE, TX FIX	MILLSAP, TX VORTAC	*8000
*3500—MOCA		
§ 95.6020 VOR FEDERAL AIRWAY 20 IS AMENDED TO READ IN PART		
GLOSS, GA FIX	MADDI, GA FIX	*3000
*2200—MOCA		
§ 95.6035 VOR FEDERAL AIRWAY 35 IS AMENDED TO READ IN PART		
GLOSS, GA FIX	MADDI, GA FIX	*3000
*2200—MOCA		
§ 95.6066 VOR FEDERAL AIRWAY 66 IS AMENDED TO READ IN PART		
GLOSS, GA FIX	MADDI,GA FIX	*3000
*2200—MOCA		
§ 95.6067 VOR FEDERAL AIRWAY 67 IS AMENDED TO READ IN PART		
WATERLOO, IA VORTAC	FOYDE, IA FIX	3000
FOYDE, IA FIX	ROCHESTER, MN VOR/DME	3500
§ 95.6076 VOR FEDERAL AIRWAY 76 IS AMENDED TO READ IN PART		
LLANO,TX VORTAC	CENTEX, TX VORTAC	3200
CENTEX, TX VORTAC	MOUZE, TX FIX	2200
MOUZE, TX FIX	INDUSTRY, TX VORTAC	2100
§ 95.6123 VOR FEDERAL AIRWAY 123 IS AMENDED TO READ IN PART		
CARMEL, NY VOR/DME	*WIGAN, NY FIX	3000
*4500—MRA		
WIGAN, NY FIX	ALBANY, NY VORTAC	3000
§ 95.6157 VOR FEDERAL AIRWAY 157 IS AMENDED TO READ IN PART		
KINGSTON, NY VOR/DME	*WIGAN, NY FIX	3000
*4500—MRA		
WIGAN, NY FIX	ALBANY, NY VORTAC	3000
§ 95.6193 VOR FEDERAL AIRWAY 193 IS AMENDED TO READ IN PART		
CLOCK, MI FIX	WHITE CLOUD, MI VORTAC	2800
§ 95.6196 VOR FEDERAL AIRWAY 196 IS AMENDED TO READ IN PART		
BECKS, NY FIX	SMAIR, NY FIX	5000
§ 95.6198 VOR FEDERAL AIRWAY 198 IS AMENDED TO READ IN PART		
SAN ANTONIO, TX VORTAC	SEEDS, TX FIX	2700
CRESTVIEW, FL VORTAC	DEFUN, FL FIX	2000
DEFUN, FL FIX	CHEWS, FL FIX	*3000
*1600—MOCA		
CHEWS, FL FIX	MARIANNA, FL VORTAC	2000
§ 95.6212 VOR FEDERAL AIRWAY 212 IS AMENDED TO READ IN PART		
SAN ANTONIO, TX VORTAC	SEEDS, TX FIX	2700
§ 95.6216 VOR FEDERAL AIRWAY 216 IS AMENDED TO READ IN PART		
MANKATO, KS VORTAC	PAWNEE CITY, NE VORTAC	3600
§ 95.6222 VOR FEDERAL AIRWAY 222 IS AMENDED TO READ IN PART		
STONEWALL, TX VORTAC	MARCS, TX FIX	*4500

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 412 Effective Date, December 3, 1998]

From	To	MEA
*3400—MOCA		
§ 95.6259 VOR FEDERAL AIRWAY 259 IS AMENDED TO READ IN PART		
BARRETTS MOUNTAIN, NC VOR/DME	GOWBE, NC FIX	5000
*GOWBE, NC FIX	HOLSTON MOUNTAIN, TN VORTAC	7500
*6000—MCA GOWBE FIX, N BND		
§ 95.6285 VOR FEDERAL AIRWAY 285 IS AMENDED TO READ IN PART		
CLOCK, MI FIX	WHITE CLOUD, MI VORTAC	2800
§ 95.6289 VOR FEDERAL AIRWAY 289 IS AMENDED TO READ IN PART		
TEXARKANA, AR VORTAC	*PROVO, AR FIX	**2200
*4500—MRA		
**1700—MOCA		
PROVO, AR FIX	UMPIR, AR FIX	*3900
*3400—MOCA		
UMPIR, AIR FIX	BATEZ, AR FIX	*4300
*3800—MOCA		
BATEZ, AR FIX	FORT SMITH, AR VORTAC	*4100
*3600—MOCA		
§ 95.6292 VOR FEDERAL AIRWAY 292 IS AMENDED TO READ IN PART		
SAGES, NY FIX	*WIGAN, NY FIX	**10000
*4500–MRA		
**5200–MOCA		
WIGAN, NY FIX	BARNES, MA VORTAC	*10000
*5200–MOCA		
§ 95.6306 VOR FEDERAL AIRWAY 306 IS AMENDED TO READ IN PART		
JUNCTION, TX VORTAC	AMUSE, TX FIX	3800
AMUSE, TX FIX	CENTEX, TX VORTAC	3100
CENTEX, TX VORTAC	NAVASOTA, TX VORTAC	2300
§ 95.6454 VOR FEDERAL AIRWAY 454 IS AMENDED TO READ IN PART		
GLOSS, GA FIX	MADDI, GA FIX	*3000
*2200–MOCA		
§ 95.6485 VOR FEDERAL AIRWAY 485 IS AMENDED TO READ IN PART		
HENCE, CA FIX	SAN JOSE, CA VOR/DME	4600
§ 95.6490 VOR FEDERAL AIRWAY 292 IS AMENDED TO READ IN PART		
UTICA, NY VORTAC	*GALWA, NY FIX	**4000
*6000–MRA		
**3300–MOCA		
GALWA, NY FIX	CAMBRIDGE, NY VOR/DME	*4000
*3300–MOCA		
CAMBRIDGE, NY VOR/DME	STRUM, NH FIX	*6000
*5300–MOCA		
STRUM, NH FIX	DUBIN, NH FIX	5000
DUBIN, NH FIX	LURCH, NH FIX	4000
LURCH, NH FIX	*MUGGY, NH FIX	4000
*4000–MCA MUGGY FIX, W BND		
MUGGY, NH FIX	MANCHESTER, NH VOR/DME	3000
§ 95.6521 VOR FEDERAL AIRWAY 521 IS AMENDED TO READ IN PART		
*TERES, FL FIX	CRESS, FL FIX	**4000
*7000–MCA TERES FIX, E BND		
*1300–MOCA		
§ 95.6550 VOR FEDERAL AIRWAY 550 IS AMENDED TO READ IN PART		
SAN ANTONIO, TX VORTAC	PINCH, TX FIX	3100

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 412 Effective Date, December 3, 1998]

From	To	MEA
PINCH, TX FIX	CENTEX, TX VORTAC	3000
§ 95.6556 VOR FEDERAL AIRWAY 556 IS AMENDED TO READ IN PART		
STONEWALL, TX VORTAC *3400–MOCA	MARCS, TX FIX	*4500
MARCS, TX FIX *1900–MOCA	SEEDS, TX FIX	*7500
§ 95.6558 VOR FEDERAL AIRWAY 558 IS AMENDED TO READ IN PART		
LLANO, TX VORTAC	SLIMM, TX FIX	3100
SLIMM, TX FIX	CENTEX, TX VORTAC	4100
CENTEX, TX VORTAC	MOUZE, TX FIX	2200
MOUZE, TX FIX	INDUSTRY, TX VORTAC	2100
§ 95.6565 VOR FEDERAL AIRWAY 565 IS AMENDED TO READ IN PART		
LLANO, TX VORTAC	AMUSE, TX FIX	3300
AMUSE, TX FIX	CENTEX, TX VORTAC	3100
CENTEX, TX VORTAC	COLLEGE STATION, TX VORTAC	2200
§ 95.6568 VOR FEDERAL AIRWAY 568 IS AMENDED TO READ IN PART		
STONEWALL, TX VORTAC	LLANO, TX VORTAC	3700
§ 95.6574 VOR FEDERAL AIRWAY 574 IS AMENDED TO READ IN PART		
CENTEX, TX VORTAC	MOUZE, TX FIX	2200
MOUZE, TX FIX	NAVASOTA, TX VORTAC	2100
§ 95.6583 VOR FEDERAL AIRWAY 583 IS AMENDED TO READ IN PART		
CENTEX, TX VORTAC	TOAMY, TX FIX	2200
TOAMY, TX FIX	COLLEGE STATION, TX VORTAC	2200

From	To	MEA	MAA
§ 95.7021 JET ROUTE NO. 21 IS AMENDED TO READ IN PART			
SAN ANTONIO, TX VORTAC	CENTEX, TX VORTAC	18000	45000
CENTEX, TX VORTAC	WACO, TX VORTAC	18000	45000
§ 95.7025 JET ROUTE NO. 25 IS AMENDED TO READ IN PART			
SAN ANTONIO, TX VORTAC	CENTEX, TX VORTAC	18000	45000
CENTEX, TX VORTAC	WACO, TX VORTAC	18000	45000
§ 95.7086 JET ROUTE NO. 86 IS AMENDED TO READ IN PART			
JUNCTION, TX VORTAC	HUMBLE, TX VORTAC	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS V–510 IS AMENDED TO READ IN PART AIRWAY SEGMENT			
EMMONAK, AK VOR/DME	ANVIK, AK NDB/DME	69	EMMO-NAK.

[FR Doc. 98–28837 Filed 10–28–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1240

[Docket No. NHTSA–98–4494]

RIN 2127–AH38

Safety Incentive Grants for Use of Seat Belts—Allocations Based on State Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule establishes procedures for determining allocations of funds under a new Federal grant program. Section 157 of title 23, United States Code, directs the Secretary of Transportation to allocate funds to States whose seat belt use rates meet certain requirements. Allocations are to be based on savings in medical costs to the Federal Government due to seat belt use rates that meet the requirements. In order to allocate the funds, the Secretary must determine which States have seat belt use rates that meet the requirements and the amount of medical savings to the Federal Government attributable to each such State's seat belt use rate. This document sets forth the requirements that govern allocations of funds under this program.

DATES: This interim final rule is effective on October 29, 1998. Comments concerning this document are due no later than January 29, 1999.

ADDRESSES: Comments should refer to the docket number set forth above and be submitted in writing to: Docket Management, Room PL–401, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are Monday-Friday, 9 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: The following persons at the U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590—In NHTSA: Joan Catherine Tetrault, State and Community Services, NSC–01, (202) 366–2121; John Donaldson, Office of the Chief Counsel, NCC–30, (202) 366–1834. In FHWA: Byron E. Dover, Office of Highway Safety, HHS–10, (202) 366–2161; Raymond W. Cuprill, Office of the Chief Counsel, HCC–20, (202) 366–0834.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1403 of the recently enacted Transportation Equity Act for the 21st Century (Pub. L. 105–178) added a new Section 157 to title 23 of the United States Code (replacing a predecessor Section 157). The new section (hereafter Section 157) authorizes a State seat belt incentive grant program covering FYs 1999 through 2003. Under this program, the Secretary of Transportation is directed to allocate funds each fiscal year to States that achieve a seat belt use rate that exceeds, for the past two years, the national average seat belt use rate, or that exceeds the highest seat belt use rate achieved by the State in certain designated previous years. The allocated funds are to reflect the amount of savings in medical costs to the Federal Government, based on the seat belt use rates. States may use these allocated funds for any projects eligible for assistance under title 23, United States Code. (Section 157 provides for the further distribution of funds, if any funds remain unallocated after the required allocations related to seat belt use rates are made, but today's action does not address those provisions.)

Today's interim final rule sets forth the requirements and procedures that will apply to the allocation of funds based on seat belt use rates. The Secretary's authority to administer the program has been delegated to NHTSA and FHWA. Consequently, this interim final rule is being issued jointly by the two agencies (hereafter, the agencies).

B. General

Section 157 requires the Secretary to allocate funds, starting in FY 1999, to States that achieve certain seat belt use rates. A State can satisfy the requirement by meeting one of two conditions: First, if the State's seat belt use rate in each of the preceding two calendar years exceeded the national average seat belt use rate for those years; and second, if the State's seat belt use rate in the previous calendar year exceeded its ''base seat belt use rate.'' The base seat belt use rate is defined as the State's highest seat belt use rate for any calendar year during the period of 1996 through the calendar year preceding the previous calendar year. (For example, for allocations made in FY 2000 (on or about October 1, 1999), the base seat belt use rate would be the State's highest seat belt use rate during the period from calendar year 1996 through calendar year 1997.) Section 157 further provides that a State may receive an allocation under the second condition only if it fails to meet the first condition. Hence, if a State meets both conditions, it may not receive an allocation under both conditions, and it may not receive an allocation under the second condition. It must receive an allocation under the first condition.

A State that meets the first condition described above is to receive an allocation of funds that reflects the ''savings to the Federal Government'' due to the amount by which the State seat belt use rate for the previous calendar year exceeds the national average seat belt use rate for that year. A State that meets the second condition (and not the first condition) is to receive an allocation that reflects the ''savings to the Federal Government'' due to the amount by which the State seat belt use for the previous calendar year exceeds the State's base seat belt use rate. Section 157 defines ''savings to the Federal Government'' as ''the amount of Federal budget savings relating to Federal medical costs (including savings under the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 *et seq.*)), as determined by the Secretary.''

In order to determine whether a State is eligible for an allocation of funds during each fiscal year, based on the above-described requirements, NHTSA must obtain and evaluate State seat belt use rate information from two contiguous calendar years. Specifically, to make the determinations necessary to allocate funds in FY 1999, Section 157 requires the use of seat belt use rate information submitted by the States for calendar years 1996 and 1997. Section 157 provides that this information is to be weighted by the Secretary to ensure national consistency in methods of measurement. The determinations necessary to allocate funds in FY 2000 and thereafter require the use of seat belt use rate information for calendar year 1998 and beyond, and are subject to different requirements. (For FY 2000 allocations only, calendar year 1997 seat belt use rate information is still required, along with the calendar year 1998 information, and the 1997 information is subject to the above-described weighting procedure.) Specifically, beginning in calendar year 1998, Section 157 requires States to measure seat belt use rates following criteria established by the Secretary, to ensure that the measurements are ''accurate and representative.'' In accordance with this latter mandate,

NHTSA recently published the Uniform Criteria for State Observational Surveys of Seat Belt Use (hereafter, Uniform Criteria), an interim final rule establishing the criteria to be followed by States in measuring seat belt use rates for calendar year 1998 and beyond (23 CFR Part 1340, 63 FR 46389, September 1, 1998).

For all calendar years during which State seat belt use rates must be measured, NHTSA must calculate the national average seat belt use rate, to use in eligibility and allocation determinations. Additionally, for each State determined to be eligible for an allocation (either based on a seat belt use rate that exceeds the national average seat belt use rate or one that exceeds the State's own base seat belt use rate), NHTSA must calculate the amount of medical savings to the Federal Government due to the State's higher seat belt use rate, to determine the amount of the allocation. These necessary steps, along with the information needed to accomplish them, are identified and explained in today's interim final rule.

C. Highlighted Provisions

1. Identification of Eligible States

Consistent with Section 157, the interim final rule provides that a State will receive an allocation of funds on or about October 1, 1998 and each October 1 thereafter if its seat belt use rate either exceeds the national average seat belt use rate for the previous two calendar years or exceeds the State's base seat belt use rate. The interim final rule also provides that the State may not receive an allocation under both of these criteria. If the State meets the first criterion, its allocation will be based on that criterion, irrespective of whether the State also meets the second criterion. These eligibility requirements mirror the requirements of the statute. When NHTSA makes eligibility determinations under the regulation, it will use seat belt use rate data rounded to the nearest tenth of one percent.

The interim final rule applies different procedures to the identification of eligible States for allocations in FY 1999 (i.e., on or about October 1, 1998) and in FY 2000 and beyond (i.e., on or about October 1, 1999 and each October 1 thereafter). For fiscal year 1999, a state will receive an allocation if it meets one of the two previously discussed conditions, on the basis of calendar year 1996 and 1997 seat belt use rate information. The use and adjustment of that information is governed by other provisions in the rule. (See Determination of State Seat Belt Use Rate for Calendar Years 1996 and 1997, below, for a discussion of those provisions.) Since data for these two years predates the enactment of Section 157, NHTSA is affording wide latitude to the States, and will make adjustments to the data or substitutions, as necessary, as discussed in greater detail below.

For seat belt use rate information for calendar year 1998 and beyond, which affects allocations beginning in FY 2000, Congress has directed that the information be provided by the States in accordance with criteria established by the Secretary (the previously discussed Uniform Criteria). Consequently, for a State to be considered for an allocation in FY 2000 and beyond, with one exception, the interim final rule provides that it must conduct a survey and submit a survey report that satisfies the Uniform Criteria. The exception allows a State to certify, with respect to calendar year 1998 only, that it has conducted a survey using a survey design that was approved in writing by NHTSA for the purposes of qualification under 23 U.S.C. 153 (a previous grant program with similar survey needs), with certain specific modifications, and to submit a copy of that survey report. The requirement for the survey, and the details of review, approval, and certification, are governed by other provisions of the rule. (See Determination of State Seat Belt Use Rate for Calendar year 1998 and Beyond, below, for a discussion of those provisions.)

The rule provides that a State is ineligible for an allocation if it fails to conduct a seat belt use survey when one is required. States should note that failure to comply with these survey requirements during one calendar will affect more than one year of allocations. For example, if a State fails to conduct a survey in calendar year 1998, it will not be eligible to receive an allocation in either FY 2000 or FY 2001 under the first condition described above. This result is due to the need for data from two contiguous calendar years in order to make the determinations required for those allocations. Using the same example, the interim final rule provides that the State will also not be eligible to receive an allocation in FY 2000 or FY 2001 under the second condition described above. While the second condition does not rely upon two contiguous calendar years of data, NHTSA believes that allowing a State to be evaluated under the second condition when it has not met the prerequisites for evaluation under the first condition is inconsistent with the statutory framework.

2. Determination of State Seat Belt Use Rate for Calendar Years 1996 and 1997

Section 157 requires that the State seat belt use rate for calendar years 1996 and 1997 be weighted to ensure national consistency in methods of measurement. The interim final rule provides a mechanism to achieve the required national consistency. NHTSA will use existing seat belt use rate information submitted by a State for each of calendar years 1996 and 1997, provided it meets four requirements: (1) Measurements of seat belt use were based on direct observation; (2) at least 70 percent of observation sites were surveyed during the calendar year for which the seat belt use rate is reported; (3) all passenger motor vehicles were sampled; and (4) all front seat outboard occupants in the sampled vehicles were counted. These requirements are also among the requirements included in the Uniform Criteria that apply to surveys to be conducted in calendar year 1998 and beyond, except that the Uniform Criteria require that all observations be made during the calendar year for which the seat belt use rate is reported. (The Uniform Criteria include additional requirements as well.) The third requirement, that passenger motor vehicles (passenger cars, pickup trucks, vans, minivans, and sport utility vehicles) be sampled, is a direct requirement of Section 157.

If the first two requirements are met, but either of the last two requirements is not met, the interim final rule provides that the State-submitted seat belt use rate information will be adjusted, based on information from the most recently conducted National Occupant Protection Use Survey (NOPUS). The NOPUS is a probability-based survey of national seat belt use conducted by NHTSA on a periodic basis. Using the NOPUS, an adjustment will be made based on the national ratio of seat belt use rates for front outboard occupants in passenger motor vehicles to the use rates for the group of occupants and vehicles that were included in the State-submitted information. The adjustment process will result in an estimate of seat belt use rate that includes front seat outboard occupants for passenger motor vehicles. The details of this process appear in Appendix A to the interim final rule.

If either of the first two requirements is not met for calendar year 1996 or 1997 submissions, NHTSA will not use the State-submitted seat belt use rate information for any calendar year during which a requirement is not met, as the agency does not believe that the information can be meaningfully

adjusted to ensure national consistency in methods of measurement. Instead, the interim final rule provides that NHTSA will use information from the Fatality Analysis Reporting System (FARS) to arrive at an estimate of the State's seat belt use rate. The FARS is a NHTSA database containing information, including seat belt use statistics, about crashes that have resulted in at least one fatality. Seat belt use rates of fatally-injured occupants from the FARS will be correlated to observed use rates, using an algorithm that relates historical seat belt use by fatally-injured occupants to observed use. The details of this process appear in Appendix B to the interim final rule.

In establishing the process for data adjustment and use of alternate data, as discussed above, NHTSA has given careful attention to achieving fair and nationally consistent measures of seat belt use rates for calendar years 1996 and 1997, mindful of the fact that these years have already ended, while allowing significant flexibility in the use of a variety of existing information provided by the States.

3. Determination of State Seat Belt Use Rate for Calendar Year 1998 and Beyond

Section 157 provides that States must submit seat belt use rate information in accordance with criteria established by the Secretary, beginning in calendar year 1998 and in each calendar year thereafter. As discussed above, NHTSA published these criteria in an interim final rule in the **Federal Register** on September 1, 1998 (63 FR 46389). States should refer to that document for guidance on survey requirements. Today's interim final rule requires that each State must submit its seat belt use rate, expressed as a percentage to one decimal place, and an accompanying survey report each calendar year by no later than March 1st after the calendar year in which the survey was conducted. The survey report is to consist, at minimum, of the documentation required under the Uniform Criteria (23 CFR 1340.5), including information about design, data collection, and estimation, and is to summarize the results of any analyses conducted under the survey.

The time-frame for submission provides ample opportunity for States to compile information and compute seat belt use rates following the close of the calendar year, while also providing sufficient time for necessary agency reviews and determinations, and for the timely allocation of funds. The interim final rule provides that NHTSA will review each survey report to determine whether it complies with the requirements of the Uniform Criteria, and provide written notice of approval or disapproval to the Governor's Representative for Highway Safety. The rule also provides that a State may submit a description of its proposed survey methodology for advance review, prior to conducting the survey. This will provide an extra measure of assurance to a State, prior to committing resources, that its survey will satisfy the requirements of the Uniform Criteria. After conducting the survey, the State will still be required to submit its survey report for review, along with the State's seat belt use rate.

The Uniform Criteria are substantially similar to survey guidelines that existed under another grant program (23 U.S.C. 153). Under that program, some States had previously submitted survey designs and received NHTSA approval for the designs. NHTSA believes that prior approval under that program is a strong indication that the survey will satisfy most of the requirements of the Uniform Criteria, provided the survey design has remained unchanged. Consequently, where a State-submitted survey design has received previous NHTSA approval (on or after June 29, 1992, the date of publication of the guidelines for the previous program), the interim final rule provides that in lieu of reviewing a survey design for calendar year 1998, NHTSA will accept the State's seat belt use rate if the survey methodology it is following has remained unchanged since that approval, except for the additional requirements included under the new program, which must all be met. The new requirements include the sampling of all passenger motor vehicles, the measurement of seat belt use by all front outboard occupants in the sampled vehicles, and the counting of seat belt use only within the calendar year for which the seat belt use rate is reported. The State must certify that its seat belt use rate is based on a survey whose design has received such prior approval, that its survey design incorporates the new requirements identified above and that it otherwise has remained unchanged. The certification format appears in Appendix C of the interim final rule. The State is still required to submit its seat belt use rate and its survey report, which is to consist of the documentation required under the Uniform Criteria (23 CFR 1340.5), along with the certification, by March 1st after the calendar year during which the survey was conducted. The interim final rule provides that NHTSA will send written notice of acceptance or rejection of the certification to the Governor's Representative for Highway Safety. The certification process applies only to calendar year 1998 surveys, to reduce administrative review burdens during the first year of the survey requirement in view of the late enactment of Section 157. Thereafter (i.e., for surveys conducted in calendar year 1999 and beyond), the review and approval process described above will apply.

4. Determination of National Average Seat Belt Use Rate

Section 157 requires a determination of each State that is eligible for an allocation of funds based on a seat belt use rate that exceeds the national average seat belt use rate for the past two years. Consequently, for each calendar year for which State seat belt use rates are required to be determined, as discussed above, NHTSA must calculate the national average seat belt use rate. The procedure adopted under the interim final rule provides that each State's seat belt use rate for the relevant calendar year, adjusted as necessary under other provisions of the rule, will be weighted to reflect the percentage of total national vehicle miles traveled attributable to that State. The national average seat belt use rate will be determined by summing all of the weighted State seat belt use rates.

If a seat belt use rate is unavailable for a State during a particular calendar year or is reported based on a survey that does not comply with the Uniform Criteria, NHTSA will use the most recently available seat belt use rate for the State, as determined under other provisions of today's interim final rule, along with information from the FARS and from the algorithm that relates historical seat belt use by fatally-injured occupants to observed use, as discussed previously. In this manner, the agency will arrive at an estimated seat belt use rate for the State for the missing calendar year. NHTSA will apply this procedure to all States for which a seat belt use rate is unavailable during a calendar year, in order to include seat belt use rates from every State in the calculation of the national average seat belt use rate. The details of this process appear in Appendix D to the interim final rule.

Appendix D to the interim final rule provides that NHTSA reserves the option to use the results of a non-complying survey in determining the national average seat belt use rate, if in NHTSA's judgment, the deficiencies in the survey are not so substantial as to render the survey less accurate than an estimate based on the FARS process. The agency has included this option in recognition of the fact that all estimates

are necessarily imperfect, and to ensure maximum flexibility in the process of determining an accurate national average seat belt use rate. States should note that NHTSA's estimation of a State's seat belt use rate for the purpose of determining the national average seat belt use rate will not alter a State's ineligibility to receive an allocation of funds if the State has not complied with applicable survey submission requirements.

5. Determination of Federal Medical Savings

As provided under Section 157, the measurement of savings in Federal medical costs is to equal the amount of Federal budget savings, including savings under the Medicare and Medicaid programs, attributable to differences in seat belt use rates. To measure these savings, the interim final rule first provides that NHTSA will determine the impact of seat belt use on fatalities and injuries. The methods used relate the effectiveness of seat belts, current use rates, and existing injury levels to determine the impact of increasing seat belt use on motor vehicle safety. The methods adopted in the interim final rule are well-established, and have been used for many years in analyses of NHTSA's regulatory programs, and in published estimates of the impacts of seat belt use.

After estimating the number of fatalities prevented and non-fatal injuries avoided due to increased seat belt use, NHTSA will adjust national medical costs to individual State income levels, to reflect local per-case costs. These per-case costs will be further adjusted for inflation, using the most recent annual average Consumer Price Index for medical care, and multiplied by the number of injuries and fatalities prevented in each State to derive the total medical cost savings from increased seat belt use. NHTSA will then determine the Federal share of those medical costs from the best available sources. The details of this process appear in Appendix E to the interim final rule.

6. Allocations

As previously discussed, Section 157 provides that the amount of a State's allocation is equal to the amount of Federal medical savings attributable to the difference between the State's seat belt use rate and the national average seat belt use rate or the State's base seat belt use rate, as applicable. The interim final rule provides that, on or about September 1 prior to each fiscal year during which allocations are to be made, NHTSA will notify each State of its proposed allocation. Consistent with Section 157, the rule provides that the proposed allocations will be reduced proportionately if the allocations would exceed the total amount of available authorizations. Allocations will be further reduced if, in the aggregate, they exceed total obligation limitations applicable to Section 157. Allocated funds are available for any project eligible for assistance under Title 23, United States Code. Within 25 days after notice of its proposed allocation, each State must identify the amount of the allocated funds that will be used for highway safety programs and the amount that will be used for Federal-aid highway programs. The interim final rule provides that this information is to be sent, in writing, jointly by the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation to the appropriate NHTSA Regional Administrator and FHWA Division Administrator. On or about October 1, the funds will be allocated officially, in accordance with the information received from the State. Thereafter, the State will identify specific NHTSA program areas or FHWA accounts to which the allocated funds are to be credited. This process will permit the proper accounting entries to be made.

D. Interim Final Rule

This rule is being published as an interim final rule, without prior notice and opportunity to comment. The agencies believe that there is good cause for finding that providing prior notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest, since it concerns actions required by statute to be taken as early as September 1, 1998. For the same reasons, the agencies have determined that prior notice and an opportunity for comment are not required under the Department's regulatory policies and procedures.

The statute authorizing the grant program to which this interim final rule applies (Pub. L. 105–178) provides that determinations of eligibility are to be made as early as September 1, 1998, and that allocations of funds to States are to be made on October 1, 1998. The statute was enacted on June 9, 1998, leaving little time for implementation of necessary procedures. These circumstances make it necessary to implement the statutory requirements by an interim final rule. For these reasons, pursuant to 5 U.S.C. 808 (Pub. L. 104–121) (the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act), the agency also, for good cause, finds that notice and public procedure are impracticable, unnecessary, and contrary to the public interest and, therefore, this rule can be made effective upon publication.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to receive an allocation of funds under this new program are similar to procedures that States have followed in another grant program administered by NHTSA (23 U.S.C. 153). These procedures were subject to prior notice and the opportunity to comment. Moreover, additional information contained in this rule is in the nature of calculations, adjustments, and estimation to be made by NHTSA. These methods are well-established and have been used for many years in analyses of NHTSA's regulatory programs.

As an interim final rule, this regulation is fully in effect upon the date of its publication. No further regulatory action by the agencies is necessary to make the rule effective. However, in order to benefit from comments which interested parties and the public may have, the agencies are requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice, in accordance with the procedures outlined below, will be considered by the agencies.

E. Written Comments

The agencies are providing until January 29, 1999 for interested parties to present data, views, and arguments concerning this interim final rule. While the interim final rule provides notice of procedures that are immediately in effect during the current year, it also contains recurring procedures and requirements that affect future years. The long comment period will afford States the opportunity to provide more informed comments relevant to future years of the program, on the basis of experience from this year's requirements. This comment period coincides with the comment period for a companion rule, the Uniform Criteria for State Observational Surveys of Seat Belt Use (63 FR 46389), allowing commenters to address both rules in a contemporaneous time period. The agencies invite comments on the issues raised in this notice and any other issues relevant to this action. Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be

appended to these submissions without regard to the 15-page limit.

All comments received by the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, the agencies will publish a document responding to the comments and, if appropriate, the agencies will amend the provisions of this rule. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

Executive Order 12778 (Civil Justice Reform)

This interim final rule does not have any preemptive or retroactive effect. It merely implements the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' The action has been determined to be ''significant'' under Executive Order 12866 and under the Department of Transportation Regulatory Policies and Procedures because it is likely to result in significant economic impacts. The Final Economic Assessment (FEA) for this rule describes the economic effects of this rulemaking action in detail. A copy of the FEA has been placed in the docket for public inspection.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule and of a recently published companion rule (63 FR 46389) (if each State conducted one) is estimated to be $1.9 million. However, most States already conduct surveys similar to those that would be required in order to qualify for funds under Section 157, after FY 1999. The FEA concludes that there will be a one-time redesign cost totaling $160,000 for those states that currently conduct annual surveys, but whose surveys require revision, and an annual cost totaling $192,750 for those States that currently do not conduct annual surveys.

NHTSA believes that incentives provided by Section 157 could result in safety efforts that would increase seat belt use rates by an average of 1 to 4 percentage points. If such an increase is achieved, from 232 to 940 lives would be saved annually, from 5,700 to 23,000 nonfatal injuries would be prevented, and medical costs would decline by $64 million to $258 million. To raise seat belt use rates, States will have to initiate enforcement efforts and public education programs or enact legislation to upgrade current seat belt use laws to provide for primary enforcement. NHTSA estimates that the level of expenditure needed to raise seat belt use rates by 1 to 4 percentage points nationwide is approximately $200,000 per state, or $10.4 million (based on the fifty States, the District of Columbia, and Puerto Rico).

A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, and may be eligible for an allocation of funds during fiscal year 1999 without conducting a survey. Eligibility is dependent on whether the results of the survey meet certain statutory criteria. Allocations available to the States, provided they meet the statutory criteria, total $82,000,000 for fiscal year 1999, $92,000,000 for fiscal year 2000, $102,000,000 for fiscal year 2001, and $112,000,000 for each of fiscal years 2002 and 2003. The exact amount of funds allocated to States that meet the statutory criteria will vary, depending on their seat belt use rate. It is unlikely that all available funds will be allocated under this rule, because not all States will meet the statutory criteria and seat belt use rates of complying States will vary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agencies have evaluated the effects of this action on small entities. States will be the recipients of any funds awarded under the Section 157 program, and they are not small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The State seat belt use surveys that are required to be submitted by this interim final rule are considered to be information collection requirements, as defined by the Office of Management and Budget in 5 CFR Part 1320. On August 10, 1998, the Department of Transportation submitted an emergency processing information collection request to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). On August 17, OMB approved the request for clearance, assigning the collection OMB Clearance No. 2127–0597. The emergency clearance will expire on February 28, 1999. Through February 28, 1999, NHTSA is authorized to collect 17,942 burden hours from the affected States, the District of Columbia, and Puerto Rico.

National Environmental Policy Act

The agencies have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate. It is a voluntary program, in which States can choose to participate at their option. The costs to States to participate in this program will not exceed the $100 million threshold. Moreover, States that choose to participate in this program will receive

allocations of Federal funds for activities that are eligible under Title 23, United States Code.

List of Subjects in 23 CFR Part 1240

Grant programs—Transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 23, chapter II, subchapter B of the Code of Federal Regulations is amended as set forth below.

1. Part 1240 is added to read as follows:

PART 1240—SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS—ALLOCATIONS BASED ON SEAT BELT USE RATES

Subpart A—General

Sec.
1240.1 Purpose.
1240.2 Applicability.
1240.3 Definitions.

Subpart B—Determination of Allocations

1240.10 Identification of eligible States.
1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.
1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.
1240.13 Determination of national average seat belt use rate.
1240.14 Determination of federal medical savings and notification of proposed allocations.
1240.15 Allocations.
Appendix A—Adjustment Procedures for State-Submitted Information (Calendar Years 1996 and 1997)
Appendix B—Procedures for Missing or Inadequate State-Submitted Information (Calendar Years 1996 and 1997)
Appendix C—Certification (Calendar Year 1998 Survey Based on Survey Approved Under 23 U.S.C. 153)
Appendix D—Determination of National Average Seat Belt Use Rate
Appendix E—Determination of Federal Medical Savings

Authority: 23 U.S.C. 157; delegations of authority at 49 CFR 1.48 and 1.50.

Subpart A—General

§ 1240.1 Purpose.

This part establishes requirements and procedures governing the allocation of funds to States made under 23 U.S.C. 157(c), based on seat belt use rates.

§ 1240.2 Applicability.

These procedures apply to all allocations of funds to States, based on seat belt use rates, beginning with allocations for fiscal year 1999.

§ 1240.3 Definitions.

As used in this part—

Base seat belt use rate means the highest State seat belt use rate for the State for any calendar year during the period from 1996 through the calendar year preceding the previous calendar year;

Federal medical savings means the amount of Federal budget savings relating to Federal medical costs (including savings under the Medicare and Medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C.1395 *et seq.*)), as determined under this part;

FHWA means the Federal Highway Administration;

NHTSA means the National Highway Traffic Safety Administration;

Passenger motor vehicle means a passenger car, pickup truck, van, minivan, or sport utility vehicle;

State means any of the fifty States, the District of Columbia, or Puerto Rico.

State seat belt use rate means the seat belt use rate for a State, rounded to the nearest tenth of one percent, after any required weighting, adjustment, or substitution under this part, that is used in determining eligibility for and the amount of an allocation under this part.

Subpart B—Determination of Allocations

§ 1240.10 Identification of eligible States.

(a) On or about September 1, 1998, and each September 1 thereafter, NHTSA will identify, on the basis of seat belt use rates determined, as applicable, under §§ 1240.11, 1240.12, and 1240.13 of this part—

(1) Each State that had a State seat belt use rate during the previous calendar year and the year preceding the previous calendar year that exceeded the national average seat belt use rate for each of those years; and

(2) Each State that does not meet the requirements of paragraph (a)(1) of this section and that had a State seat belt use rate during the previous calendar year that exceeded the State's base seat belt use rate.

(b) Any seat belt use rate used in making the determinations under this part shall be rounded to the nearest tenth of one percent.

(c) A State identified under paragraph (a)(1) or (a)(2) of this section, and not ineligible under § 1240.12(a)(2) of this part, shall receive an allocation of funds reflecting the Federal medical savings, in accordance with the procedures of §§ 1240.14 and 1240.15 of this part.

§ 1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.

(a) *Review of State-submitted information.* NHTSA will review available seat belt use rate information submitted by each State for calendar years 1996 and 1997 to determine whether—

(1) Measurements of seat belt use were based on direct observation;

(2) At least 70 percent of observation sites were surveyed during the calendar year for which the seat belt use rate is reported;

(3) All passenger motor vehicles were sampled; and

(4) All front seat outboard occupants in the sampled vehicles were counted.

(b) *Determination of State seat belt use rate.* Seat belt use rate information submitted by a State for calendar year 1996 or 1997 will be—

(1) Accepted as the State seat belt use rate if it satisfies paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section.

(2) Accepted after adjustment in accordance with the procedures of Appendix A of this part, as the State seat belt use rate, if it satisfies paragraphs (a)(1) and (a)(2) of this section, but fails to satisfy paragraph (a)(3) or (a)(4) of this section.

(3) Rejected, and the procedures of Appendix B of this part shall apply, if it fails to satisfy paragraph (a)(1) or (a)(2) of this section.

§ 1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.

(a) *State seat belt use survey.*

(1) Beginning in calendar year 1998, State seat belt use rates used for determining allocations under this part shall be based on a survey conducted each calendar year by each State that satisfies all the requirements of Part 1340 of this title (the Uniform Criteria for State Observational Surveys of Seat Belt Use).

(2) A State that does not conduct a survey required under paragraph (a)(1) of this section in any calendar year, or that conducts a survey that does not satisfy all the requirements of part 1340 of chapter III of this title, shall be ineligible for an allocation of funds on the basis of both § 1240.10(a)(1) and § 1240.10(a)(2) of this part during the second and third succeeding fiscal years (e.g., if a State fails to conduct a conforming survey in calendar year 1998, the State is ineligible for an allocation of funds during FY 2000 and FY 2001).

(b) *Submission of survey information.* (1) Each State shall submit to NHTSA, no later than March 1st after the calendar year during which a survey required under paragraph (a)(1) of this section is conducted, the seat belt use rate determined under the survey, reported as a percentage to one decimal place, accompanied by a survey report, consisting of all documentation identified in § 1340.5 of chapter III of

this title and summarizing the results of any analyses conducted under the survey.

(2) NHTSA will review a survey report submitted under paragraph (b)(1) of this section to determine whether the survey complies with all the requirements of § 1340 of chapter III of this title. Written notice of approval or disapproval of a survey will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the survey report. Any notice of disapproval will be accompanied by a detailed statement of the reasons for disapproval.

(3) A State may elect to submit a description of its proposed survey methodology, consisting of all documentation identified in § 1340.5 (a), (b) and (c)(3) of chapter III of this title for advance review, prior to conducting the survey.

(4) NHTSA will review a proposed survey methodology submitted under paragraph (b)(3) of this section and inform the Governor's Representative for Highway Safety in writing within 30 days of receipt of the proposed methodology whether the survey, if conducted in accordance with the methodology, would comply with all the requirements of § 1340 of chapter III of this title. Any notice indicating non-compliance will be accompanied by a detailed statement of the reasons.

(5) A State that submits a description of its proposed survey methodology under paragraph (b)(3) of this section continues to be required to submit all information required under paragraph (b)(1) of this section, after the State conducts its survey, for review under paragraph (b)(2) of this section.

(c) *Submission of Certification—calendar year 1998 surveys.*

(1) A survey conducted by a State in calendar year 1998 shall be deemed to comply with the requirements of § 1340 of chapter III of this title, if—

(i) The survey's design was approved by the agency, in writing, on or after June 29, 1992, for the purposes of the grant program authorized under 23 U.S.C. 153;

(ii) The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph (c)(1)(iii) constitute a change); and

(iii) The survey samples all passenger motor vehicles, measures seat belt use by all front seat outboard occupants in the sampled vehicles, and counts seat belt use only within the calendar year for which the seat belt use rate is reported.

(2) A State that meets the requirements of paragraph (c)(1) of this section shall submit a certification signed by the Governor's Representative for Highway Safety, in the form prescribed in Appendix C of this part, accompanied by the information required under paragraph (b)(1) of this section.

(3) Written notice of acceptance or rejection of a certification will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the information required under paragraph (c)(2) of this section. Any notice of rejection will be accompanied by a detailed statement of the reasons for rejection.

(d) *Determination of State seat belt use rate.* The seat belt use rate submitted by the State for a calendar year will be accepted as the State seat belt use rate for that calendar year if—

(1) It was determined under a survey whose survey report was approved under paragraph (b)(2) of this section; or

(2) For calendar year 1998 only, the State satisfies the requirements of paragraphs (c)(1) and (c)(2) of this section, and its certification is accepted under paragraph (c)(3) of this section.

§ 1240.13 Determination of national average seat belt use rate.

The national average seat belt use rate for a calendar year shall be the sum of the individual State seat belt use rates for all the States, after weighting each individual State seat belt use rate in accordance with the procedures of Appendix D of this part.

§ 1240.14 Determination of Federal medical savings and notification of proposed allocations.

On or about September 1, 1998, and each September 1 thereafter, NHTSA will—

(a) Calculate, in accordance with the procedures in Appendix E of this part, the Federal medical savings and each State's share of those savings, due to the amount by which the State seat belt use rate for the previous calendar year—

(1) Exceeds the national average seat belt use rate for that calendar year, for each State described in § 1240.10(a)(1) of this part; or

(2) Exceeds the State's base seat belt use rate, for each State described in § 1240.10(a)(2) of this part; and

(b) Notify the States described in § 1240.10(c) of this part of their proposed allocations, which shall be equal to the amount of the Federal medical savings calculated under paragraphs (a)(1) and (a)(2) of this section, as applicable, reduced proportionately across all States if the allocations would exceed the total amount authorized for allocation during the fiscal year.

§ 1240.15 Allocations.

(a) Funds allocated under this part shall be available for any projects eligible for assistance under title 23, United States Code.

(b) Not later than 25 days after notification under § 1240.14(b) of this part, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives notification shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's proposed allocations that will be used in highway safety programs and in Federal-aid highway programs.

(c) On or about October 1, 1998, and each October 1 thereafter, the funds to which a State is entitled under this part will be allocated in the proportions identified by the State under paragraph (b) of this section, reduced proportionately across all States if the allocations would, in the aggregate, exceed total obligation limitations applicable to 23 U.S.C. 157.

(d) Thereafter, each State shall identify specific NHTSA program areas and FHWA projects for which the allocated funds will be used.

Appendix A—Adjustment Procedures for State-Submitted Information (Calendar Years 1996 and 1997)

A. In States where State-submitted information on seat belt use rates does not include data for Front outboard occupants in passenger motor vehicles (FOPV), an adjustment will be made based on the national ratio of seat belt use rates for FOPV to the seat belt use rate for the group of occupants and vehicles that were included in the State-submitted information. The national seat belt use rates will be derived from the most recent National Occupant Protection Use Survey (NOPUS). For each affected State, the adjustment will be made by dividing the NOPUS seat belt use rate for FOPV by the NOPUS seat belt use rate for the surveyed group, or the seat belt use rate for the closest available group to the surveyed group. The NOPUS seat belt use rate for FOPV will be derived for each affected State by weighting the NOPUS seat belt use rates for passenger cars and for passenger motor vehicles that are not passenger cars (hereafter LTVs) by the relative number of registrations of passenger cars and LTVs in each State. This method will produce a factor which will be multiplied by the State's survey-based seat belt use rate to produce an adjusted seat belt use rate reflecting the required vehicle and occupant population.

B. The process may be expressed mathematically as follows:

$$U_a = U_s((N_{pc} * R_{pc} + N_{ltv} * R_{ltv}) / N_s)$$

Where:

U_a = the adjusted State seat belt use rate

U_s = the State-submitted seat belt use rate

N_{pc} = the national front outboard passenger car seat belt use rate from NOPUS

N_{ltv} = the national front outboard LTV seat belt use rate from NOPUS

R_{pc} = the portion of State passenger motor vehicle registrations that are passenger cars

R_{ltv} = the portion of State passenger motor vehicle registrations that are LTVs

N_s = the national seat belt use rate for the State-surveyed vehicle and occupant population (or closest available group from NOPUS)

Appendix B—Procedures for Missing or Inadequate State-Submitted Information (Calendar Years 1996 and 1997)

A. If State-submitted seat belt use rate information is unavailable or inadequate for both calendar years 1996 and 1997, State seat belt use rates for calendars year 1996 and 1997 will be estimated based on seat belt use rates of fatally-injured occupants. Data from the Fatality Analysis Reporting System (FARS) will be translated into estimated observed seat belt use rates using an algorithm that relates historical belt use by fatally-injured occupants to observed use.[1]

B. The algorithm is as follows:

$$u = (-.221794 + \sqrt{.049193 + .410769F}) / .456410$$

Where:

u = the estimated observed seat belt use

F = the seat belt use in potentially fatal crashes

In the above formula, F is calculated as follows:

$$F = (f / (1-e)) / ((f / (1-e)) + 1 - f)$$

Where:

F = the seat belt use in potentially fatal crashes

e = State-specific weighted average effectiveness of seat belts in passenger cars and passenger motor vehicles that are not passenger cars

f = State-specific seat belt use rate of fatally-injured occupants of passenger vehicles

C. If State-submitted seat belt use rate information is available for either calendar year 1996 or 1997, but not both, a State seat belt use rate for the year for which information is missing will be estimated by calculating the percent change in the FARS-based observed seat belt use rate (derived from the above algorithm) between the two years. This factor will then be applied to the seat belt use rate from the known year to derive an estimate of the seat belt use rate for the unknown year.

Appendix C—Certification (Calendar Year 1998 Survey Based on Survey Approved Under 23 U.S.C. 153)

State Certification-Calendar Year 1998 Seat Belt Use Survey

State of _____ _____

Seat Belt Use Rate Reported for Calendar Year _____ : _____ %.

In accordance with the provisions of 23 CFR 1240.12(c)(2), I hereby certify as follows:

1. The seat belt use rate reported above is based on a survey whose design was approved by NHTSA, in writing, on or after June 29, 1992, under the provisions of the grant program authorized by 23 U.S.C. 153.

2. The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph 3 constitute a change).

3. The survey samples all passenger motor vehicles (including cars, pickup trucks, vans, minivans, and sport utility vehicles), measures seat belt use by all front outboard occupants in the sampled vehicles, and counts seat belt use completely within the calendar year for which the seat belt use rate is reported.

_____

Governor's Representative for Highway Safety

_____

(Date)

Appendix D—Determination of National Average Seat Belt Use Rate

A. To determine the national average seat belt use rate in a calendar year, each State seat belt use rate for the calendar year will be weighted to reflect the percentage of total national vehicle miles traveled attributable to that State.

B. If a State seat belt use rate is unavailable for a State during a calendar year (either because the State did not conduct a seat belt use survey or a survey was conducted but does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340), NHTSA will calculate a State seat belt use rate, using the last available State seat belt use rate determined under § 1240.11 or § 1240.12 of this part, as applicable, along with information on seat belt use rates from the FARS, and an algorithm relating FARS seat belt use rates to observed seat belt use rates (see Appendix 1, note). This procedure will produce an estimated State seat belt use rate for the unknown calendar year. The estimated State seat belt use rate will then be weighted in the manner described in paragraph A of this appendix.

C. The national average seat belt use rate for the calendar year will be determined by adding the weighted State seat belt use rates for each of the States (i.e., the national average seat belt use rate is the weighted average of all the State seat belt use rates).

D. NHTSA may elect to use a seat belt use survey that does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use in determining the national average seat belt use rate (even though the State that submitted the survey is ineligible to receive an allocation of funds), if in NHTSA's judgment, the deficiencies in the survey are not so substantial as to render the survey less accurate than the FARS estimate.

Appendix E—Determination of Federal Medical Savings

A. To determine the savings to the Federal Government from reduced medical costs attributable to seat belt use, NHTSA will first estimate the impact of seat belt use on the number of fatalities and injuries, using methods described in the report ''Estimating the Benefits from Increased Safety Belt Use.''[1] These methods establish a relationship between the effectiveness of seat belts, current use rates, and existing injury levels to determine the impact of increasing seat belt use on motor vehicle safety. Using these methods, NHTSA will estimate the fatalities prevented and the non-fatal injuries avoided by increased seat belt use.

B. In the 1996 report ''The Economic Cost of Motor Vehicle Crashes, 1994,''[2] NHTSA measured both the medical costs and payment sources for motor vehicle crashes. NHTSA will adjust the national medical cost figures from this report to individual State income levels to reflect local cost levels. These per-case costs will be further adjusted for inflation, using the most recent annual average Consumer Price Index for medical care, and then multiplied by the injuries and fatalities prevented in each State to derive the total medical care savings from increased seat belt use. The Federal portion of these costs will be derived from the best available data found in the same cost report or in other sources, as they may become available.

Issued on: September 30, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–28811 Filed 10–23–98; 3:26 pm]

BILLING CODE 4910–59–P

[1] Blincoe, L.J. *Estimating the Benefits of Increased Safety Belt Use.* Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 133, June, 1994.

[2] Blincoe, L.J. *The Economic Cost of Motor Vehicle Crashes, 1994.* Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 425, July, 1996.

POSTAL SERVICE

39 CFR Part 6

Board of Governors Bylaws

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved an amendment to its bylaws. The amendment allows Governors attending special meetings of the Board conducted by conference telephone call to receive the statutory $300 compensation for a meeting day if the meeting lasts more than an hour.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION: On October 6, 1998, the Board of Governors

of the Postal Service amended its bylaw provisions concerning attendance at meetings by telephone conference call. Previously, bylaw 6.4 (39 CFR 6.4), has provided that members may participate in any meeting of the Board of Governors by telephone, but that only those Governors attending in person would receive the $300 in compensation provided under 39 U.S.C. 202(a) for attending not more than 30 days of meetings per year.

Developments in technology since this bylaw was adopted have made it possible for modern business and government organizations to conduct meetings by teleconference more effectively than in the past. In addition, while the Board of Governors holds regular monthly meetings in person, generally two days in duration, the Board has found that important business sometimes requires the scheduling of special meetings by teleconference, in between the regularly scheduled monthly meetings, as authorized in bylaw 6.2 (39 CFR 6.2), and subject to compliance with the Board's rules implementing the Government in the Sunshine Act, in Part 7 of the bylaws (39 CFR part 7). The amendment approved on October 6 permits a Governor to receive the $300 in compensation for participation in such a special meeting of the full Board by teleconference, if the meeting is more than one hour in duration. It also allows compensation for special committee meetings held between Board meetings. As provided in 39 U.S.C. 202(a), nevertheless, the number of meeting days, including both regular and special meetings, for which a Governor may be paid such compensation still may not exceed 30 days per year.

List of Subjects in 39 CFR Part 6

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

Accordingly, 39 CFR Part 6 is amended as follows:

PART 6—MEETINGS (ARTICLE VI)

1. The authority citation for Part 6 continues to read as follows:

Authority: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C. 552b (3), (g).

2. Section 6.4 is revised to read as follows:

§ 6.4. Attendance by conference telephone call.

Unless prohibited by law or by these bylaws, a member of the Board may participate in a meeting of the Board by conference telephone or similar communications equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting; and no Governor attending by telephone may receive compensation, except for a special meeting by conference telephone that is more than one hour in duration, or a special committee meeting between Board meetings called under § 6.2 of these bylaws.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–29006 Filed 10–28–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6179–7]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Michigan has applied for final authorization of the revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Michigan'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, EPA's decision to authorize Michigan's hazardous waste program revision will take effect as provided below.

DATES: This immediate final rule will become effective on December 28, 1998. The immediate final rule will become effective without further notice unless EPA receives adverse written comments on or before November 30, 1998. Should the EPA receive such comments, it will publish a timely document withdrawing this rule.

ADDRESSES: Send written comments to: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604. Copies of the Michigan program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Michigan Department of Environmental Quality, 608 W. Allegan, Hannah Building, Lansing, Michigan. Contact: Ms. Ronda Blayer, phone: (517) 353–9548; and EPA, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. Contact: Ms. Judy Feigler, phone: (312) 886–4179.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone: (312) 886–4179.

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. Michigan

Michigan initially received Final Authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805) to implement its base hazardous waste management program. Michigan received authorization for revisions to its program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on April 23, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective on April 8, 1996 (61 FR 4742); and on November 14, 1997, effective November 14, 1997 (62 FR 61775).

The authorized Michigan RCRA program was incorporated by reference into the CFR effective April 24, 1989 (54 FR 7420). The incorporation by reference was amended on May 1, 1990, effective May 1, 1990 (55 FR 18112) and on January 31, 1992, effective March 31, 1992 (57 FR 3724).

On April 23, 1998, Michigan submitted a final complete program

revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Michigan's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Michigan's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Michigan final authorization for the program modifications contained in the revision.

The public may submit written comments on EPA's immediate final decision until November 30, 1998. Copies of Michigan'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 Michigan's program revision by the end of the comment period, the authorization of Michigan's revision will become effective in 60 days from the date this document is published. If the Agency does receive adverse written comment, it will publish a notice withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the 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.

Michigan is today seeking authority to administer the following Federal requirements promulgated between February 21, 1991, and March 26, 1996:

Checklist No.	Description of Federal requirement	FEDERAL REGISTER date and page	Analogous State authority
85	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	February 21, 1991, 56 FR 7134	R 299.9102(a), R 299.9104(m), (p) and (q), R 299.9106(n), R 299.9107(r), R 299.9202(1)(b)(v) and (vi), R 299.9204(1)(m), (2)(d), (h) and (j), R 299.9502, R 299.9504(15) and (19), R 9508(1)(b), R 299.9519, R 299.9601, R 299.9613, R 299.9623(1), R 299.9808, R 299.11001(4), and R 299.11003(1)(l), (o), (q), (r) and (t)
94	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I.	July 17, 1991, 56 FR 32688	R 299.9202(1)(b)(v) and (vi), R 299.9203(4)(b), R 299.9206(2), R 299.9502, R 299.9504(15) and (19), R 299.9508(1)(b), R 299.9519(3)(b), (5)(j), (9) and (10)(d), R 299.9601(3) and (8), R 299.9808(2)(b) and (c) and (6)–(8), R 299.11003(1)(l), (o), (q), (r) and (t)
96	Burning of Hazardous Waste in Boilers and Industrial Furnaces, Technical Amendments II.	August 27, 1991, 56 FR 42504	R 299.9202(1)(b)(vi), R 299.9203(4)(b), R 299.9601(3) and (8), R 299.9808(1), (3)(a), (b), and (d), (6), (7)(a)(i), (b) and (c) and (8), and R 299.11003(1)(l), (o), (q), (r) and (t)
98	Coke Ovens Administrative Stay	September 5, 1991, 56 FR 43874	R 299.9808(1)
100	Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units.	January 29, 1992, 57 FR 3462	R 299.9107(i) and (z), R 299.9504(6)–(8), and (19), R 299.9508(1)(b), R 299.9516(6), R 299.9519(5)(b)(xii) and (9), R 299.9601(2)(d), (3) and (8), R 299.9603(5), R 299.9604(1)(a) and (b), R 299.9605(1) and (3), R 299.9609(1) and (5), R 299.9616(1), (2) and (4), R 299.9617(1)–(3), R 299.9619(1)–(4), and (6), R 299.9620, R 299.9622, R 299.11003(1)(l), (m), (o) and (t)
103	Hazardous Debris Case-by-Case Capacity Variance.	May 15, 1992, 57 FR 20766	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(s)
105	Recycled Coke By-Product Exclusion	June 22, 1992, 57 FR 27880	R 9204(1)(m) and R 299.9808(1)
106	Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance.	June 26, 1992, 57 FR 2828	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(s)

Checklist No.	Description of Federal requirement	FEDERAL REGISTER date and page	Analogous State authority
109	Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris.	August 18, 1992, 57 FR 37194	R 299.9203(4)(c) and (6), R 299.9306(1)(a)(iii) and (b), R 299.9311, R 299.9413, R 299.9504(1)(b) and (c), R 299.9508(1)(b), R 299.9601(3) and (8), R 299.9613(1) and (6), R 299.9616(1) and (4), R 299.9627, R 299.9701, R 299.11003(1)(l), (o), (s) and (t)
110	Coke By-Products Listings	August 18, 1992, 57 FR 37284	R 299.9204(1)(m), R 299.9209, R 299.9222, and R 299.11003(1)(i)
111	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III.	August 25, 1992, 57 FR 38558	R 299.9104(q), R 299.9106(n), R 299.9202(4)(d), R 299.9206(2)–(4), R 299.9210(2), R 299.9211(4), R 299.9212(9), R 299.9601, R 299.9808(1), (3)(b) and (c), (4), (5), (6) and (8), and R 299.11003(1)(g), (l), (o), (q), (r) and (t)
112	Recycled Used Oil Management Standards.	September 10, 1992, 57 FR 41566	R 299.9102(n) and (z), R 299.9104(i) and (j), R 299.9106(r), R 299.9107(f), R 299.9109(m), (o)–(t), and (v)–(bb), R 299.9203(1)(c)–(e), (2)(b) and (c), R 299.9204(1)(o), R 299.9205(8), R 299.9206(2)(c)–(e), (3)(b)–(g) and (4), R 299.9808(2), R 299.9809, R 299.9810- R 299.9816, and R 299.11003(1)(v)
113	Financial Responsibility for Third-Party Liability, Closure, and Post-Closure.	September 16, 1992, 57 FR 42832	R 299.9709, R 299.9710(8), (10)(e) and (13)
114	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV.	September 30, 1992, 57 FR 44999	R 299.9808(3)(d), (6) and (8), and R 299.11003(1)(q), (r) and (t)
115	Chlorinated Toluenes Production Waste Listing.	October 15, 1992, 57 FR 47376	R 299.9222, R 299.9209, and R 299.11002(1)(i)
116	Hazardous Soil Case-By-Case Capacity Variance.	October 20, 1992, 57 FR 47772	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(s)
118	Liquids in Landfills II	November 18, 1992, 57 FR 54452	R 299.9107(t) and (u), R 299.9601(3) and (8), R 299.9605(1) and (3), R 299.9619(1) and (6), and R 299.11003(1)(l) and (o)
119	Toxicity Characteristic Revision; TCLP Correction.	November 24, 1992, 57 FR 55114, as amended on February 2, 1993, 58 FR 6854.	R 299.11003(1)(i)
122	Recycled Used Oil Management Standards; Technical Amendments and Corrections I.	May 3, 1993, 58 FR 26420–26426, as amended on June 17, 1993, 58 FR 33341.	R 299.9109(o), R 299.9203(1)(c) and (d) and (2)(b) and (c), R 299.9204(2)(n), R 299.9205(8), R 299.9206 (2)–(4), R 299.9809, R 299.9810(1), (3) and (5), R 299.9812(2)(d), (3) and (7), R 299.9813(3), (5) and (7), R 299.9814(3)(a)(iii), (4) and (8), R 299.9815(1), (3)(b), (d), (e) and (4), and R 299.11003(1)(v)
123	Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance.	May 14, 1993, 58 FR 28506	R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(s)

Checklist No.	Description of Federal requirement	FEDERAL REGISTER date and page	Analogous State authority
124	Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated.	May 24, 1993, 58 FR 29860	R 299.9311, R 299.9413, R 299.9627, R 299.9503(1)(f) (iii), R 299.9519(5)(b) (iii), and R 299.11003(1) (s)
125	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	July 20, 1993, 58 FR 38816	R 299.9808(3)(d), (6) and (8), R 299.11003(1)(q), (r) and (t), and R 299.11001(4)
126	Testing and Monitoring Activities	August 31, 1993, 58 FR 46040, as amended on September 19, 1994, 59 FR 47980.	R 299.9211(1)(a) and (4), R 299.9212(2) and (4), R 299.9311, R 299.9413, R 299.9504(4), (15), and (19), R 299.9508(1)(b), R 299.9601(2)(h), (3) and (8), R 299.9615(1), R 299.9619(1) and (6), R 299.9627, R 299.9808(5) and (7), R 299.11001(1)(1) and (v), R 299.11003(1)(g), (i), (l), (o), (s), and (t), and R 299.11005
127	Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues.	November 9, 1993, 58 FR 59598	R 299.9808(6) and (8), and R 299.11003(1)(q) and (r)
128	Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection.	January 4, 1994, 59 FR 458	R 299.11003(1)(i) and R 299.11005
129	Revision of Conditional Exemption for Small Scale Treatability Studies.	February 18, 1994, 59 FR 8362	R 299.9204(7)(a)–(b), (8), (9) and (10)(c)–(e)
130	Recycled Used Oil Management Standards; Technical Amendments and Corrections II.	March 4, 1994, 59 FR 10550	R 299.9106(l), R 299.9109(aa), R 299.9203(1)(c) and (d) and (2)(b) and (c), R 299.9809(1)(a), (2)–(2)(b), and (h)–(m), R 299.9812(3) and (7), R 299.9813(1) and (2)(c), and R 299.11003(1)(v)
131	Recordkeeping Instructions; Technical Amendment.	March 24, 1994, 59 FR 13891	R 299.11003(1)(n) and (p)
132	Wood Surface Protection; Correction	June 2, 1994, 59 FR 28484	R 299.11005
134	Correction of Beryllium Powder (P015) Listing.	June 20, 1994, 59 FR 31551	R 299.9224, R 299.9311, R 299.9413, R 299.9627, and R 299.11003(1)(i) and (s)
135	Recovered Oil Exclusion	July 28, 1994, 59 FR 38536	R 299.9203(4)(b), R 299.9204(1)(l), R 299.9206(3)(c)–(g), and R 299.9808(2)
136	Removal of the Conditional Exemption for Certain Slag Residues.	August 24, 1994, 59 FR 43496	R 299.9311, R 299.9413, R 299.9627, R 299.9801(4), and R 299.11003
137	Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	September 19, 1994, 59 FR 47982, as amended on January 3, 1995, 60 FR 242.	R 299.9202(3)(c), (6), (6)(b), (7) and (8), R 299.9311, R 299.9413, R 299.9503(1)(f)(iii), R 299.9627, R 299.9801(6), R 299.9808(3)(a) and (7), and R 299.11003(1)(g), (q), (r) and (s)
139	Testing and Monitoring Activities Amendment I.	January 13, 1995, 60 FR 3089	R 299.11005
140	Carbamate Production Identification and Listing of Hazardous Waste.	February 9, 1995, 60 FR 7824	R 299.9203(1)(c), (1)(c)(vi) and (vii) and (4)(d), R 299.9222, R 299.9224, R 299.9225, and R 299.11003(1)(i)
141	Testing and Monitoring Activities Amendment II.	April 4, 1995, 60 FR 17001	R 299.11005

Checklist No.	Description of Federal requirement	FEDERAL REGISTER date and page	Analogous State authority
142A	Universal Waste: General Provisions	May 11, 1995, 60 FR 25492	R 299.9102(r), R 299.9104(a) R 299.9106(b), R 299.9109(f)–(k), R 299.9204(3)(b), R 299.9205(2) and (5), R 299.9228, R 299.9301(2)–(6), R 299.9302(2), R 299.9311, R 299.9413, R 299.9503(1)(c) and (j), R 299.9601(3), (6), and (8), R 299.9627, and R 299.11003(1)(o), (s) and (u)
142B	Universal Waste: Specific Provisions for Batteries.	May 11, 1995, 60 FR 25492	R 299.9101(a) and (s), R 299.9109(f), R 299.9206(3)(b)–(g), R 299.9228, R 299.9311, R 299.9413, R 299.9503(1)(j), R 299.9601(3), (6) and (8), R 299.9627, R 299.9804(1) and (2), and R 299.11003(1)(o), (s) and (u)
142C	Universal Waste: Specific Provisions for Pesticides.	May 11, 1995, 60 FR 25492	R 299.9103(r), R 299.9106(k), R 299.9109(f), R 299.9228, R 299.9311, R 299.9413, R 299.9503(1)(j), R 299.9601(3), (6) and (8), R 299.9627, and R 299.11003(1)(o), (s) and (u)
142D	Universal Waste Rule: Specific Provisions for Thermostats.	May 11, 1995, 60 FR 25492	R 299.9108(d), R 299.9109(f), R 299.9228, R 299.9311, R 299.9413, R 299.9503(1)(j), R 299.9601(3), (6) and (8), R 299.9627, and R 299.11003(1)(o), (s) and (u)
142E	Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	May 11, 1995, 60 FR 25492	R 299.9229, and R 299.11003(1)(g)
144	Removal of Legally Obsolete Rules	June 29, 1995, 60 FR 33912	R 299.9220, R 299.9502(2)(b)(i) and (11), R 299.9808(6) and (8), and R 299.11003(1)(q) and (t)
145	Liquids in Landfills III	July 11, 1995, 60 FR 35703	R 299.9601(1), (3) and (8), R 299.9619(1) and (6), R 299.11003(1)(n) and (o)
150	Amendments to the Definition of Solid Waste; Amendment II.	March 26, 1996, 61 FR 13103	R 299.9204(1)(l)

[1] The Michigan provisions are from the Michigan Administrative Code unless otherwise stated.

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 used 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. EPA has previously suspended issuance of permits for the other provisions on October 30, 1986; January 23, 1990; June 24, 1991; November 30, 1993; and April 8, 1996, the effective dates of Michigan final authorizations for the RCRA base program and for the Non-HSWA Clusters I–VI, HSWA Clusters I and II, and portions of RCRA Clusters I–III.

Michigan is not authorized to operate this Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Michigan's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Michigan final authorization to operate its hazardous waste program as revised. Michigan 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. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions, including but not limited to overfiling, 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 Michigan's program and for incorporation by reference of those provisions of its statutes and regulations

that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart X, until a later date.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. 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 provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of tribal governments 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 is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Michigan 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 Indian country within the State.

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 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 Michigan 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.

E. 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.

F. 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 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 today's

Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. 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.

H. National Technology Transfer and Advancement Act

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

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, 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: October 9, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

[FR Doc. 98–28722 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Health Care Programs: Fraud and Abuse; Revised OIG Exclusion Authorities Resulting From Public Law 104–191; Correction

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final Rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Wednesday, September 2, 1998 (63 FR 46676). The regulations addressed revisions to the OIG's administrative sanction authorities resulting from the Health Insurance Portability and Accountability Act of 1996, along with technical and conforming changes to the OIG exclusion authorities. A number of inadvertent errors appeared in the text of the regulations relating to program integrity for the Medicare and State health care programs. As a result, we are making corrections to two sections addressing the length of exclusion and notice of intent to exclude in order to assure the technical correctness of these regulations.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on September 2, 1998 (63 FR 46676) that addressed revisions to the OIG's administrative sanction authorities resulting from the Health Insurance Portability and Accountability Act of 1996, along with technical and conforming changes to the OIG exclusion authorities. In that final rule, two inadvertent errors appeared in 42 CFR part 1001 and are now being corrected.

In § 1001.2001, addressing the elimination of in-person hearings prior to when an exclusion is proposed, the regulatory language was intended to be consistent with the preamble discussion on page 46682, and state that when an exclusion was proposed under § 1001.701 or § 1001.801, the individual or entity would be permitted to request, in conjunction with their written submission, an opportunity to present oral argument to an OIG official. In order to correctly emphasize that a request to present oral argument to an OIG official can only be made in cases involving exclusion under sections 1128(b)(6) (B) and (C) of the Social Security Act, we are correcting the regulatory text that was set forth in § 1001.2001.

In addition, we are correcting a typographical error that appeared on page 46686, column 3 in § 1001.102(b)(4). Specifically, in line 4 of paragraph (b)(4), the words ''or behavior'' are being corrected to read as ''of behavior.''

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Social security.

Accordingly, 42 CFR part 1001 is corrected by making the following correcting amendments:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.102 is amended by republishing paragraph (b) introductory text and by revising paragraph (b)(4) to read as follows:

§ 1001.102 Length of exclusion.

* * * * *

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

* * * * *

(4) In convictions involving patient abuse or neglect, the action that resulted in the conviction was premeditated, was part of a continuing pattern of behavior, or consisted of non-consensual sexual acts;

* * * * *

3. Section 1001.2001 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 1001.2001 Notice of intent to exclude.

(a) Except as provided in paragraph (c) of this section, if the OIG proposes to exclude an individual or entity in accordance with subpart C of this part, or in accordance with subpart B of this part where the exclusion is for a period exceeding 5 years, it will send written notice of its intent, the basis for the

proposed exclusion and the potential effect of an exclusion. Within 30 days of receipt of notice, which will be deemed to be 5 days after the date on the notice, the individual or entity may submit documentary evidence and written argument concerning whether the exclusion is warranted and any related issues.

(b) If the OIG proposes to exclude an individual or entity under the provisions of § 1001.701 or 1001.801 of this part, in conjunction with the submission of documentary evidence and written argument, an individual or entity may request an opportunity to present oral argument to an OIG official.

* * * * *

Dated: October 20, 1998.

Joel Schaer,

OIG Regulations Officer.

[FR Doc. 98–28736 Filed 10–28–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 276

RIN 0970–AB92

Welfare-to-Work Data Collection

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: The Administration for Children and Families is issuing an interim final rule that specifies the reporting requirements applicable to States and Indian tribes with respect to participants receiving services under Welfare-to-Work (WtW) grants. The overall purpose of the WtW program is to assist States, Tribes, and other grantees to provide transitional employment assistance that moves hard-to-employ welfare recipients, living in high poverty areas, into unsubsidized employment and economic self-sufficiency. WtW grants are targeted to assist those TANF (Temporary Assistance for Needy Families) recipients, and certain noncustodial parents, who have experienced or have characteristics associated with long-term welfare dependency. This regulation implements portions of section 411 of the Social Security Act, 42 U.S.C. 611.

DATES: The interim final rule is effective October 29, 1998. However, affected parties do not have to comply with this information collection requirement until we receive approval from the Office of Management and Budget and publish the control numbers assigned to it under the Paperwork Reduction Act of 1995.

Comment period: You must submit comments by December 28, 1998. We will not consider comments received after this date.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Planning, Research and Evaluation, 7th Floor West, 370 L'Enfant Promenade, SW, Washington, DC 20447. Attention: Patrick Brannen.

Comments that are less than 10 pages in length may be transmitted via facsimile at (202) 205–3598, provided that submission of written text follows.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the interim final rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare/ and follow any instructions provided.

We will make all comments available for public inspection at the Office of Planning, Research and Evaluation, 7th Floor West, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m.EST. (This is the street address, as opposed to the mailing address above.)

We will not acknowledge the individual comments we receive. However, we will review and consider all that are germane and received during the comment period.

FOR FURTHER INFORMATION, CONTACT: Patrick Brannen, Division of Data Collection and Analysis, Office of Planning, Research and Evaluation, ACF, at (202) 401–5096.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

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I. The Interim Final Rule and the Paperwork Reduction Act

The Balanced Budget Act of 1997, Pub. L. 105–33, amended title IV–A of the Social Security Act (the Act) to authorize Welfare-to-Work (WtW) grants to States and Tribes. The Department of Labor (DOL) and the Department of Health and Human Services (DHHS) share responsibility for the implementation of this program. In general, DOL has overall responsibility for program administration, and DHHS has responsibility for participant data collection and evaluation of the program.

The Department of Labor issued an interim final rule to implement the WtW grants program on November 18, 1997 (62 FR 62124). This DHHS interim final rule implements section 411 of the Act and specifies the WtW participant data collection and reporting requirements that must be submitted by those States and Indian tribes administering WtW grants.

We have determined that publication of an interim final rule is necessary as WtW grants are authorized to be awarded only in FY 1998 and FY 1999. Information collection is required by statute to begin as soon as States and Tribes begin implementing the program. In addition, it is critical that information be available in order to conduct the evaluation and submit the reports to Congress required by statute. Section 413(j) of the Act requires DHHS to submit an interim report to Congress in January 1999 and a final report in January 2001. These reports must contain an evaluation of how the WtW grant funds have been used, including specific outcome information on participants.

The WtW participant and expenditure data elements in this interim final rule are designed to provide critical information for the WtW evaluation and the reports to Congress. These data elements will also help grantees manage and evaluate their programs. Although DHHS is funding a national study of the WtW program, little information from this study will be available for several years. States and Tribes represent the primary source of information on individual participants that will enable us to carry out our statutory responsibilities.

For these reasons, we believe an interim final rule is justified. However, we are sensitive to the issue of reporting

burden on States and Tribes. We have limited the data elements to those specified in section 411 of the Act, with a few necessary exceptions. Although the information to be reported is specified in the statute, it is not specified in the form of individualized data elements. Thus, a regulation is necessary to convert the required data into a format suitable for reporting. We will, however, consider all comments received in response to this rule in determining what changes are appropriate before issuing a final rule.

This interim final rule contains information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

As required by the Paperwork Reduction Act, we have submitted these interim final data collection requirements to OMB for review and approval and are concurrently using this rule as a vehicle for seeking comments from the public on these information collection activities.

II. Legislative and Regulatory Background

A. The Personal Responsibility and Work Opportunity Reconciliation Act

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), or the welfare reform law (Pub. L. 104–193), established the Temporary Assistance for Needy Families (TANF) program in title IV-A of the Act. TANF is a block grant program designed to make dramatic reforms in the nation's welfare system.

The TANF provisions substantially changed the nation's welfare system from one in which cash assistance was provided on an entitlement basis to a system in which the primary focus is on moving welfare recipients to work and promoting family responsibility, accountability, and self-sufficiency. The law limits federal assistance to a 60-month period of time for most adult recipients of State TANF programs. Such individuals are expected to become self-sufficient within that timeframe. (The 60-month time limit is not applicable to recipients under the Tribal TANF program.)

In support of this objective, the statute established an overall work participation rate for all families and a work participation rate for two-parent families that must be met by each State, beginning in fiscal year 1997 and in each fiscal year thereafter. States that do not meet the participation requirements face significant financial penalties. The Secretary is authorized to establish the work participation rates for Indian tribes. States may provide to recipients, with TANF, WtW, or other funding, job-related education and skills training as well as other services to ensure lasting employment and the achievement of self-sufficiency.

TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) which provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program.

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. Indian tribes were also authorized to run their own TANF programs and a number have elected to do so. We published a Notice of Proposed Rulemaking to implement the work, penalties, and data collection provisions of the TANF program in the **Federal Register** on November 20, 1997 (62 FR 62124). On July 22, 1998, we published an NPRM on the Tribal Work and TANF Programs (63 FR 39366).

B. Welfare-to-Work Grants

Following the enactment of PRWORA, the Administration and Congress were concerned that those welfare recipients who have the least skills, education, and employment experience, and who live within high poverty areas, might need additional assistance to obtain lasting jobs and become self-sufficient.

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended title IV–A of the Act to authorize the Secretary of Labor to make Welfare-to-Work (WtW) grants to States, Indian tribes, Private Industry Councils (PICs), local governments, and other private entities to help move hard-to-employ TANF welfare recipients and certain noncustodial parents into unsubsidized jobs providing good career potential for achieving economic self-sufficiency.

Among other responsibilities, DOL is authorized to—

- make formula grants to States and Indian tribes;
- make competitive grants to a wide range of local entities, e.g., local governments, Private Industry Councils (PICs), community development corporations, community action agencies, and other public and private entities; and
- award performance bonuses to those States which most effectively place hard to employ individuals in lasting employment at increased earnings.

These activities are described more fully below.

Formula Grants to States

Section 403(a)(5)(A) of the Act authorizes DOL to award 75 percent of the funds available in each of fiscal years 1998 and 1999 as formula grants to States. States are required to pass through 85 percent of the formula grant funds to PICs. PICs (known as workforce development boards in some areas) oversee and guide job training programs in geographical jurisdictions called service delivery areas (i.e., generally one or more units of local government with a population of 200,000 or more). A State is allowed to retain 15 percent of the money for WtW projects of its choice. Governors are responsible for administering formula grant funds and for assuring that they are coordinated with funds spent under the TANF block grant.

Formula Grants to Indian tribes

Sections 403(a)(5)(F) and 412(a)(3) of the Act authorize DOL to award $15 million as grants to Indian tribes in each of fiscal years 1998 and 1999.

Competitive grants

Section 403(a)(5)(B) of the Act provides that DOL will distribute approximately 25 percent of available WtW funds through a competitive grant process. These funds provide targeted assistance needed to move hard-to-employ TANF recipients and certain noncustodial parents into lasting unsubsidized jobs. These grants also will help expand the base of knowledge about programs which are successful in achieving program goals.

Eligible competitive grant applicants include PICs; local governments; and a range of private entities including community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, and public and private colleges and universities.

Features Which Apply to Both Formula and Competitive Grants

Use of funds: Funds may be used to help move eligible individuals into jobs by—job creation through public or private sector wage subsidies; on-the-job training; contracts with public or private providers of job readiness, job placement, and post-employment services; job vouchers for similar

services; community service or work experience; or job retention and supportive services (if such services are not otherwise available).

Participant eligibility: At least 70 percent of the grant funds must be spent on TANF recipients or non-custodial parents of minor children receiving TANF assistance who: face two of three specified labor market deficiencies and who are long-term welfare recipients or who face termination from TANF within 12 months. Labor market deficiencies include a lack of a high school diploma or GED certificate and low reading or math skills, requiring substance abuse treatment for employment, and a poor work history.

Up to 30 percent of the grant funds may be spent on individuals who are ''recent'' recipients of TANF assistance or noncustodial parents who have characteristics associated with long-term dependence such as school dropout, teen pregnancy, or poor work history.

Performance Bonuses

Section 403(a)(5)(E) of the Act specifies that DOL will award $100 million in performance bonuses in FY 2000 to those States which most effectively place hard-to-employ individuals in lasting employment at increased earnings.

Importance of Coordination

Coordination and cooperation among State/county TANF agencies, Indian tribes, and the State and local WTW agencies will be a major factor in the success of this program and of the national welfare reform initiative. Hard-to-employ welfare recipients constitute a significant portion of the TANF population, and it is this population the WtW grants aim to serve.

State workforce development systems will help implement WtW and assist welfare recipients to secure lasting employment. Key stakeholders in these systems include the PICs, local governmental entities, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities. Cooperation among these diverse entities and actors will be critical for both program and data collection purposes.

III. Welfare-to-Work Data Collection Requirements

A. Joint DOL/DHHS Information Collection Strategy

Because the TANF and the WtW programs are closely related in terms of statutory provisions, program goals, administrative responsibilities, and the population being served, DOL and DHHS established a working group to develop a coordinated implementation strategy. The DOL interim final rule, published November 18, 1997, was also coordinated with the Departments of Housing and Urban Development and Transportation.

As a part of this coordinated effort, DOL and DHHS have developed a joint WtW information collection strategy. The purpose of the strategy is to assure an integrated approach to WtW data collection, develop a common data format to facilitate data transmission and use, minimize grantee reporting burden, and make the most effective use of Federal resources.

Under this strategy—

- DHHS will issue participant data reporting requirements, through regulations, applicable to State and Tribal WtW formula grant programs. The reporting requirements will apply to all WtW participants in these formula grant programs and will be reported to DHHS by the State and the Tribe in a format provided by DHHS. The data required to be reported includes the disaggregated ''TANF'' data in sections 411(a)(1)(A)(i) through (xvii), the disaggregated ''WtW'' data in section 411(a)(1)(A)(xviii), and the aggregated ''WtW'' data in sections 411(a)(2) through (4) and (6). (For a discussion of the specific data elements, see ''*What data must States and Tribes file on individual participants? (§ 276.3)*'' below.)
- DOL will specify participant reporting requirements applicable to competitive grant programs. Like the requirements for States and Tribes, the reporting requirements will apply to all individuals enrolled in the WtW competitive grant program. The data will be reported to DOL by the grantee unless the State agrees to compile and transmit the data to DHHS. DHHS and DOL will jointly develop a common data format and specifications to facilitate this complementary reporting.
- DOL will specify financial reporting requirements for both formula and competitive grantees.
- DOL will also specify additional targeting, eligibility, and other data elements for both formula and competitive grantees under its general administrative authority. These additional data elements will provide data to verify that the eligibility and targeting requirements in section 403(a)(5)(C)(ii) have been met.
- The data elements in this interim final rule will be consolidated with the data elements specified by DOL into a common reporting form. DOL and DHHS will publish a Paperwork Reduction Act Notice on the common reporting form in the Federal Register in the near future.
- DHHS and DOL will issue guidance and facilitate technical assistance on the WtW data collection strategy, describing the interface between the population served and the data reporting systems, emphasizing the need to share information between service delivery components and levels, and identifying options for State and Tribes in reporting these data.

B. Section by Section Discussion of the Interim Final Rule

What Does This Part Cover? (§ 276.1)

This section specifies the scope and content of part 276, including what information we will collect from certain States and Tribes on individuals and families receiving services under WtW grants and the electronic filing and sampling requirements. Although the WtW data reporting provisions are a part of the overall data collection and reporting requirements specified in section 411 of the Act, we have published them on a temporary basis in a separate part of the regulations (45 CFR part 276) in order to avoid confusion with the provisions of the TANF Notice of Proposed Rulemaking that was published on November 20, 1997. (45 CFR part 275.) The WtW data collection and reporting requirements set forth in part 276 will be incorporated into 45 CFR part 275 (Data Collection and Reporting Requirements) when the TANF regulations are finalized and into 45 CFR part 286 (Tribal Data Collection and Reporting Requirements) when regulations are finalized for Tribal TANF programs. We have included in this interim regulation only those provisions which are necessary to implement the WtW reporting requirements.

What Definitions Apply to This Part? (§ 276.2)

Three of the five definitions in this section are commonly used acronyms such as ACF, TANF, and WtW. The term ''State'' and ''the Act'' are also defined.

For purposes of this regulation, WtW means only those services or activities provided under a State formula grant

pursuant to section 403(a)(5)(A) of the Act or under an Indian tribal formula grant pursuant to section 412(a)(3) of the Act. *See* discussion relative to § 276.3.

What Data Must States and Indian Tribes File on Individuals Participating in the WtW Program? (§ 276.3)

This section specifies what WtW participant and expenditure data States and Indian tribes must collect and report to DHHS.

Section 276.3(a) requires States and Indian tribes receiving a WtW formula grant to collect monthly, and submit quarterly, information on all individuals and families participating in the States' or Tribes' WtW formula grant program. ''All individuals and families participating in the WtW program'' means those persons who—

1—Currently receive WtW and TANF assistance;

2—Currently receive WtW and formerly received TANF assistance;

3—Currently receive WtW and would be eligible for TANF assistance except for the time limit on receipt of such assistance; and

4—Currently receive WtW and are non-custodial parents of a child (children) receiving TANF assistance.

We have taken this approach based on our reading of section 411 of the Act (data collection and reporting) and our interest in an inclusive approach to assessing and evaluating this program. As originally enacted, section 411(a) required States to report data on participants ''receiving assistance under the State program funded under this part* * *'', which in the TANF NPRM has been interpreted to mean ''under the TANF program''. However, as amended by the Balanced Budget Act, section 411(a) was also intended to require States to report new data elements for WtW program participants.

Section 411 does not address formula or competitive grants or grantees per se; it neither specifically includes or excludes them. One interpretation of section 411 would require reporting of WtW data on TANF recipients participating in any WtW program regardless of whether they are receiving services from a formula grantee, a subgrantee, or a competitive grantee. This interpretation, however, would exclude information on a significant number of WtW participants, e.g., former TANF recipients who continue to receive WtW services, non-custodial parents, and persons who would be eligible to receive TANF assistance except for the time limit on receipt of such assistance. Clearly, exclusion of these populations makes a full evaluation of the WtW grants more difficult and the findings less accurate or complete.

An alternate reading of the ''receiving assistance under the State program funded under this part* * *'' language in section 411 would provide for the collection of information on all State formula grant WtW participants. This interpretation results from the fact that with the passage of the Balanced Budget Act of 1997, there are now *two* State grant programs funded under part IV–A of the Act. We believe the references to State programs can be read to cover recipients of both State TANF and WtW assistance. However, this interpretation would not provide for reporting on all WtW participants, namely those served by competitive grantees, since these grantees are not part of a State program funded under part A of the Act.

We have determined that the second approach is a more preferable reading of the statute since it would allow the collection of information on all WtW participants in the State and Tribal formula grant programs and, thus, will yield information most useful to States, Tribes, and other grantees as well as DOL, DHHS and the Congress. Our decision to adopt this more inclusive approach forms the basis of the joint DOL/DHHS information strategy discussed above in which DHHS will, among other activities, require WtW information from State and Tribal formula grantees, and DOL will collect data from competitive grantees. Thus, through this combined DHHS/DOL approach, we will be able to collect data on all WtW participants while minimizing the burdens on grantees.

In paragraph (b), we specify that only those Tribes administering both TANF and WtW formula grants are required to report the information in part 276. Although a wide range of Indian tribes are eligible to receive WtW grants, section 412(g) of the Act requires only those Tribes with an approved tribal assistance plan (TANF) to report the data required in section 411.

Paragraph (c) of this section specifies the data elements that DHHS is requiring States to report through this regulation. These data are only the disaggregated participant information (not the aggregated data) in the Emergency TANF Data Report (ACF Form 198, issued September 30, 1997, OMB Number 0970–0164, expires September 30, 1998) and the information in the WtW Data Report specified in this interim final rule. (As noted above, these DHHS data elements plus the additional data elements specified by DOL will be collected through the use of a common reporting form.)

Paragraph (d) of this section specifies the data elements that the Tribes must report, i.e., only the disaggregated participant information (not the aggregated data elements) in the Interim Tribal TANF Data Report (ACF Form 343, issued May 6, 1998, OMB Number 0970–0176, expires December 31, 1998) and the information in the WtW Data Report specified in this interim final rule.

Paragraph (e) of this section describes the WtW Data Report. As a specific resource and reference for this discussion, we have published three appendices at the end of the regulation text: Appendix A contains the specific data elements we will collect as well as the instructions for coding these data; appendix B contains a summary of the applicable sampling specifications; and appendix C contains a Statutory Reference Table. These appendices will be published in the **Federal Register** as a part of the final rule but will not be codified in the Code of Federal Regulations.

Data Elements—Appendix A

The WtW Data Report consists of two sections; except for the eight items discussed below, all elements are required by statute.

- Section One consists of 21 disaggregated data elements. It includes identifying information, such as the individual's Social Security Number, and data on wages, employment activities, and terminations.
- Section Two consists of 10 aggregated data elements. It includes information on the total number of participants, families, noncustodial parents, and the total number of participants and families terminated. These data are required by sections 411(a)(2) through (4) and section 411(a)(6).

See the Statutory Reference Table in Appendix C which lists the specific statutory authority for each data element.

Non-statutory Requirements—Appendix A

A. The following six data elements are not required by statute, but they are necessary to, and implicit in, the administration of a data collection system—

1. State FIPS Code
2. Tribal Code
3. Reporting Month
4. Stratum
5. Case Number—TANF
6. Disposition

B. The Social Security Number is readily available. States use Social

Security Numbers to carry out the requirements of the Income and Eligibility Verification System under sections 409 and 1137 of the Act. States may use this number to share information between agencies. We would use this information for statistical purposes only, e.g., for evaluation of the WtW program as required in section 413(j) of the Act and research as required in section 413(g) of the Act.

C. Section 411(a)(1)(A)(xviii)(III) requires reporting of the wages paid to any participant in subsidized employment or on-the-job training. For more accurate data, we have broken ''wages paid'' in two elements: average hourly wages and average hours of work.

We recognize that requiring States and Tribes to report the disaggregated Emergency TANF data elements on all WtW participants may be viewed as burdensome and may appear somewhat duplicative without new coordination efforts. However, section 411(a)(1) of the Act requires that all enumerated data elements be reported for affected individuals and families. Therefore, States and Tribes must report the disaggregated Emergency TANF data elements in all WtW participants.

In addition, it should be noted that the ''TANF data elements'' in the Emergency TANF Data Report will be superseded by the reporting requirements in the TANF final rule. To the extent that these data elements are revised in the final rule, States and Tribes may need to amend their reporting systems to meet the modified requirements.

We have not specified how States and Tribes will collect and report the data specified in this interim final rule which will be a part of the common reporting form. After further discussion and consultation with State TANF and workforce agencies, Tribes, PICs, and others, DHHS and DOL plan to facilitate technical assistance in identifying effective approaches to linking and merging TANF and WtW data.

Our expectation, however, is that one State or Tribal agency will be responsible for reporting all of the data to us. Several preliminary options have been identified:

- A State may collect intake and WtW information from the participant and obtain the TANF information from the TANF program.
- How States report data offers an option for reduced reporting burden. For example, States and Tribes which report universe data on their TANF recipient population could report universe data on WtW participants. DHHS would match these data sets at the federal level.
- In the early days of implementing the program, it may be more feasible and efficient for States and Tribes to obtain both the TANF and WtW data from the participant.

Must the Data be Filed Electronically? (Section 276.4)

This section requires that State and Tribes submit data electronically. DHHS will develop and provide a pc-based software package for State and Tribal use. This will facilitate electronic data entry and transmission for each quarterly report.

We have included this requirement for the following reasons. OMB requires Federal agencies to evaluate whether the burden on respondents can be reduced by the use of automatic, electronic, mechanical, or other technological collection techniques. DHHS, along with other federal agencies, has for many years encouraged programs and grantees to use such non-paperwork approaches to meet data collection requirements. We believe all State and Tribes administering the WtW program have electronic reporting capability.

Therefore, we conclude that electronic submission of these data will not be a burden on States and that requiring electronic submission of these reports will reduce paperwork and administrative burden, be less expensive and time-consuming, and be more efficient for both States and the Federal government.

May States and Tribes Use Sampling? (Section 276.5)

Section 411(a)(1)(B) of the Act permits States and Tribes to meet the disaggregated data collection and reporting requirements by submitting data based on the use of a scientifically acceptable sampling method approved by DHHS. (States and Tribes may not submit aggregated data based on a sample.)

We have provided a definition of ''scientifically acceptable sampling method'' in paragraph (b) of this section. This definition reflects generally acceptable statistical standards for selecting samples and is consistent with existing ACF statistical policy. (See appendix B for a summary of the WtW sampling specifications.)

Various options are available to States and Tribes if they choose to provide data based on sampling. A State (or Tribe) may draw a WtW sample independently from the TANF sample, or it may choose to use a combined, stratified TANF–WtW sample in which WtW families are identified by their individual stratum code, e.g., an integrated sample. DHHS will approve a State's (Tribe's) sampling plan including sample sizes, sampling frames, and use of stratified and non-stratified samples. In addition, States and Tribes may wish to consider the following:

—If a State (or Tribe) transmits the Emergency TANF Data Report for its entire caseload, it will not need to re-transmit these data for WtW families.
—If a State (or Tribe) transmits the Emergency TANF Data Report based on a separate sample of its monthly caseload, it must report the disaggregated data from the Emergency TANF Data for all WtW families as part of its WtW transmission.
—If a State (or Tribe) transmits data based on a combined TANF/WtW sample design, it will not need to re-transmit the TANF data as it will be a part of the combined transmission.

Applicability of Other Statutory Provisions

As mentioned earlier, we have addressed in this rule only those topics specific to WtW and have not included items that were addressed in the TANF Notice of Proposed Rulemaking, such as when reports are due, requirements for complete and accurate data, and the penalty on States for failure to submit timely reports.

Since WtW data collection is not separate from TANF data collection activity, but is an integral part of such activity, the same statutory time frames, compliance, and penalty provisions that apply to TANF also apply to the WtW data collection activity. Currently, we are considering the issues raised by the comments to the TANF NPRM and will address them in the final TANF rule. It would be inappropriate for us to impose policies now on an interim final basis.

Further, the statute in section 409 (a)(2) of the Act generally provides enough authority to impose any necessary penalties (i.e., for failure to submit quarterly reports within 45 days after the end of the quarter) that might be required before the TANF rules are finalized. (The penalty is taken against the State's family assistance grant.) We will address these matters in the final WtW rule.

We welcome comments on any provisions of the TANF data collection sections in the NPRM (part 275) that may be problematic and any constructive suggestions that would improve the implementation of these WtW data reporting requirements.

We are currently reviewing the comments on the TANF NPRM and plan to publish a final rule. After the close of

the comment period on this interim final rule, we will publish a final rule, the content of which will be codified in the Code of Federal Regulations as a part of the TANF regulations. Part 276 will be vacated.

IV. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. With DOL, we have held consultations with national organizations representing State and local government and PICs, representatives of State agencies administering the WtW and the TANF programs, and other. We have considered their comments and suggestions in preparing this rule. Although this interim final rule is effective upon publication, we are providing an opportunity for a comment period of 60 days. We will consider all comments received in response to this rule in determining what changes are appropriate before issuing a final rule.

We do not believe that this regulatory action will:

- Have an annual effect on the economy of $100 million dollars or more or any adverse effects on the efficient functioning of the economy, private market (including productivity, employment, and competitiveness), health, safety, the natural environment, individuals, States, Indian tribes, and other entities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

The statute contains specific data collection requirements. The data elements in the WtW Data Report do not go beyond those explicitly stated in the statute, except for those necessary for the administration of a data collection system, the individual's Social Security Number, and one breakout item. The Social Security Number may be helpful to States and Tribes in sharing participant data between the TANF and the WtW programs.

Overall, our assessment of this interim final rule indicates that it represents the least burdensome approach to the collection of these data.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only a maximum of 50 States, the District of Columbia, certain Indian tribes, and certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act, we have, under emergency procedures, submitted these WtW data collection requirements to OMB for review and approval for an initial 180 day period. We are concurrently using this interim final rule as a vehicle for seeking comment from the public on these information collection requirements as part of the regular OMB review and approval process. This concurrent review process will assure continuity of data collection and reporting after expiration of the 180 day approval obtained under emergency procedures. Affected parties do not have to comply with the information collection requirements until we publish the control numbers assigned to the requirements by OMB under the Paperwork Reduction Act of 1995.

This rulemaking requires that States report quarterly, on all WtW participants, the WtW data elements in this rule and the disaggregated TANF data elements in the Emergency TANF Data Report (Form ACF–198, OMB Number 0970–0164, expires September 30, 1998). Indian tribes must also report quarterly, on all WtW participants, the WtW data elements in this rule and the disaggregated TANF data elements in the Interim Tribal TANF Data Report (Form ACF–343, issued May 6, 1998, OMB Number 0970–0176, expires December 31, 1998). In order to facilitate the review and public comment on the WtW reporting requirements, we have published the WtW data elements for the quarterly report as appendix A.

The WtW Data Report consists of two sections: one section of 22 disaggregated case-record data elements and one section of 10 aggregated data elements. We need this information collection to meet the requirements of section 5001(e) of the Balanced Budget Act of 1997, which amended section 411(a) (Data Collection and Reporting) of the Social Security Act.

We do not believe the requirement to report the TANF data elements and the WtW data elements for individuals participating in the WtW program necessarily creates a duplicate reporting burden. It does, however, offer an opportunity for coordination between State and local WtW formula grant agencies and TANF agencies. As a part of the joint WtW information strategy, DHHS and DOL will issue guidance and facilitate technical assistance to help States and Tribes meet these requirements.

To assist grantees in reporting electronically, we will provide a pc-based software package to facilitate data entry and transmission for each quarterly report. We welcome comments on how the burden can be further reduced.

The maximum number of respondents for this data collection are the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. (**Note:** Not all States have currently elected to receive WtW formula grants.) We also expect approximately seven Indian tribes to operate both a TANF program and a Welfare-to-Work program and become respondents.

The estimated reporting burden in this rulemaking applies only to the data elements specified in this regulation. DOL and DHHS will estimate the total burden for the common reporting form in the Paperwork Reduction Act Notice to be published in the new future.

In calculating the estimates of the reporting burden, we assumed that most States (but no Indian tribes), would collect the data by means of a sample.

The annual burden estimates include any time involved collecting information, pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, coordinating with other agencies, and transmitting the information.

In developing the estimate of paperwork burden, we consulted with knowledgeable Federal officials and researched the burden estimates for similar data collections that OMB has approved or is considering.

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Welfare-to-Work Data Report—§ 276.3 (e)	61	4	164	40,048
Disaggregated data from the Emergency TANF Data Report (ACF–198) and from the Interim Tribal TANF Report (ACF–343)—§ 276.3 (c) and (d)	61	4	248	60,512

Estimated Total Annual Burden Hours: 100,560.

The estimate for reporting the disaggregated TANF data from the Emergency TANF and the Interim Tribal TANF Data Reports (as specified in § 276.3 (c) and (d)) is more than one-third less than the burden hours for reporting all data in these reports. Earlier, we estimated an annual total of 97,416 hours to report the Emergency TANF data; since we are requiring that States report only the disaggregated TANF data (not the aggregated data) on WtW participants, we estimate the total annual burden hours to be 60,512 hours.

We encourage State, Indian tribes, organizations, individuals, and other parties to submit comments in writing regarding the information collection requirements 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.

To ensure that public comments have maximum effect in developing the final regulations, we urge that each comment clearly identify the specific section or sections of the interim final rule or the WtW data collection form that the comment addresses and follow the same order as the regulations and forms.

We will consider comments by the public on this collection of information in:

- evaluating whether the collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- evaluating the accuracy of our estimate of the burden of the collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- enhancing the quality, usefulness, and clarity of the information to be collected; and
- minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

As discussed earlier, in order to expedite the collection of information contained in this interim final rule, we have concurrently, on a separate track, requested an initial 180 day approval under OMB's emergency processing procedures. OMB is required to make a decision on this emergency request within 15 days.

We encourage States, Indian tribes, organizations, individuals, and other parties to submit comments in writing regarding the emergency collection requirements to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Desk Officer for ACF.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the interim final rule.

We have determined that the interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Congressional Review

This interim final rule is not a ''major'' rule as defined in 5 U.S.C., Chapter 8.

F. Effective Data and Absence of Notice and Comment

DOL has awarded WtW grants and State and Indian tribes have begun implementing these grants. Pursuant to 5 U.S.C. 553(b)(B), we have determined that the statutory mandate to begin information collection as soon as States and Tribes begin implementing the grants constitutes good cause for waiving notice and comment proceedings.

In addition we have determined, pursuant to 5 U.S.C. 553(d)(3), that the WtW statutory mandate provides good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The short statutory duration of the WtW grants program underscores the importance of beginning WtW information collection at the earliest possible date.

Accordingly, the issuance of a proposed rule, rather than an interim final rule, or delaying the effective date for 30 days, would be contrary to the public interest. This interim final rule sets a comment period to elicit any concerns raised by the rule. We have limited this comment period to 60 days so that any input is received in time for us to review it in considering any revisions to Part 276 while the WtW grants program is still in its early stages of operation.

List of Subjects in 45 CFR Part 276

Administrative practice and procedure, Employment, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 17.253 Employment and Training Assistance—Welfare-to-Work Grants to States and Local Entities for Hard-to-Employ Welfare Recipient Programs; 93.558 TANF Programs-State Family Assistance Grants, Assistance Grants to Territories, Matching Grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559-Loan Fund; and 93.595-Welfare Reform Research, Evaluations and National Studies)

Dated: June 4, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: July 28, 1998.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 276 is added to 45 CFR chapter II as follows:

PART 276—DATA COLLECTION AND REPORTING REQUIREMENTS FOR STATES AND INDIAN TRIBES UNDER WELFARE-TO-WORK GRANTS

Sec.
276.1 What does this part cover?
276.2 What definitions apply to this part?
276.3 What data must States and Indian Tribes file on individuals and families participating in the WtW program?
276.4 Must the data be filed electronically?
276.5 May States and Indian tribes use sampling?

Authority: 42 U.S.C. 603 and 611.

§ 276.1 What does this part cover?

(a) This part explains what information we will collect from States and Indian tribes on individuals and families participating in the Welfare-to-Work (WtW) grants program.

(b) This part also specifies electronic filing and sampling requirements.

§ 276.2 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families.

Act means Social Security Act.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means The Temporary Assistance for Needy Families Program.

WtW program means the Welfare-to-Work grants authorized by sections 403(a)(5)(A) or 412(a)(3) of the Act.

§ 276.3 What data must States and Indian tribes file on individuals and families participating in the WtW program?

(a) Each State that receives a grant under section 403(a)(5)(A) must collect on a monthly basis, and file on a quarterly basis, information on all individuals and families participating in the WtW program.

(b) Each Indian tribe that receives a grant under both section 412(a)(1) and section 412(a)(3) must collect on a monthly basis, and file on a quarterly basis, information on all individuals and families participating in the WtW program.

(c) States must file the disaggregated information in the Emergency TANF Data Report (TANF–ACF–PI–97–6, issued September 30, 1997, OMB Number 0970–0164, expires September 30, 1998) and the WtW Data Report.

(d) Indian tribes must file the disaggregated information in the Interim Tribal TANF Data Report (ACF Form 343, issued May 6, 1998, OMB Number 0970–0176, expires December 31, 1998) and the WtW Data Report.

(e) The WtW Data Report consists of two sections:

(1) Section One consists of disaggregated data on individuals. It specifies identifying and demographic data, such as the individual's Social Security Number and information on employment and terminations. It also includes total dollar expenditures associated with an individual's participation in specified work activities.

(2) Section Two consists of aggregated data on families participating in the WtW program. This section also includes two items of expenditure data.

§ 276.4 Must the data be filed electronically?

Each State and Indian tribe must file the information required in this part electronically, based on format specifications we will provide.

§ 276.5 May States and Indian tribes use sampling?

(a) Each State and Indian tribe may report the disaggregated data on all WtW participants or on a sample of participants selected through the use of a scientifically acceptable sampling method that we have approved. States and Tribes may not use a sample to generate the aggregate data.

(b) ''Scientifically acceptable sampling method'' means a probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample, and our sample size requirements are met.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices

Appendix A—Welfare-to-Work Data Report

Section One: Disaggregated Data Collection for Families and Individuals Participating in the WtW Grant Program

Section Two: Aggregated Data Collection for Families and Individuals Participating in the WtW Grant Program

Appendix B—WtW Sampling Specifications

Appendix C—Statutory Reference Table for the Welfare-to-Work Data Report

Section One: Disaggregated Data Collection For Families and Individuals Participating in the WtW Grant Program

Section Two: Aggregated Data Collection For Families and Individuals Participating in the WtW Grant Program

WTW Interim Final Rule Appendix A—

Welfare-to-Work Data Report—Section One Disaggregated Data Collection for Families and Individuals Participating in the Welfare-to-Work Grant Program

Instructions and Definitions

General Instruction: Under the statute, States and certain Indian Tribes are required to collect data on families and individuals participating in the Welfare-to-Work (WtW) Program. These data are to be collected on a monthly basis and reported on a quarterly basis to the Secretary of the Department of Health and Human Services. (DHHS). Quarterly reports are due 45 days after the close of the quarter.

The State or Tribe should collect and report data for each data element, unless explicitly instructed to leave the field blank.

State FIPS Code: Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Bureau of Standards. Tribes should enter ''00'' for this field.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
Dist. of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45

State	Code
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

Tribal Code: For Indian Tribes, enter the three-digit Tribal code that represents your Tribe (See attached appendix for a complete listing of Tribal Codes.) States should leave this field blank.

Reporting Month: Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

Stratum: Guidance: States and Tribes may submit data for their entire caseload or for a sample of families (cases). If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each WtW family. All WtW families selected in a sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99''. States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification.

Instruction: Enter the two-digit stratum code.

Case Number—TANF: Enter the number assigned by the State TANF agency or Tribal TANF grantee to uniquely identify the family participating in the WtW Programs. If the WtW participant is no longer a member of a TANF family, use the case number previously assigned to the TANF family. For a non-custodial parent participating in the WtW Program, use the TANF case number for the family that includes his(her) child.

Disposition—WtW: Guidance: A family that did not have any family member participating in the WtW Program for the reporting month but was included in the monthly sample frame is ''listed in error.''

Instruction: Enter one of the following codes for the WtW family.

1 = Data collection completed
2 = Not subject to data collection/listed in error

Person Level Data

This section allows for coding up to six family members participating in the WtW Program. If, for the reporting month, a noncustodial parent is participating in WtW activities funded under section 403(a)(5)(A) or 412 (a)(3), the noncustodial parent must also be reported in this section as a member of the related TANF family.

7. *Social Security Number:* Enter the participant's nine-digit Social Security Number in the format nnnnnnnnn.

Employment Data

For participants who are employed during the reporting month, complete this section.

8. *Average Hourly Wages:* If the family member is engaged in subsidized employment or on-the-job training under the WtW Program or if the family member's participation in the WtW activity was terminated during the reporting month due to obtaining employment, enter the average hourly wages paid (e.g., $9.50 per hour) for the reporting month.

9. *Average Hours of Work:* If the family member is engaged in subsidized employment or on-the-job training under the WtW Program, enter the average hours of work per week for the reporting month.

10. *Wage Subsidy:* If the family member is engaged in subsidized employment or on-the-job training under the WtW Program, enter the total amount of any wage subsidy provided from Federal or State (Tribal) funds for the reporting month.

Data on Amount Expended by Type of Activity

Enter the total dollar expenditures for the reporting month that are associated with the individual's participation in each of the WtW activities listed below. Estimates based on ''Generally Accepted Accounting Principles'' for cost allocation processes are acceptable. These costs must include Federal and State expenditures and are exclusive of administrative costs.

11. *Community Service:*
12. *Work Experience Program:*
13. *Public Sector Employment Wage Subsidy:*
14. *Private Sector Employment Wage Subsidy:*
15. *On-the-Job Training:*
16. *Job Readiness:*
17. *Job Placement Services:*
18. *Post-Employment Services:*
19. *Job Retention Services:*
20. *Supportive Services:*

Termination Data

If the family member's participation in the WtW activity was terminated during the reporting month, complete the questions in this section. Otherwise, leave these data elements blank.

21. *Reason for Termination of Participation in Welfare-to-Work Activity:* If the family member's participation in the WtW activity was terminated during the reporting month, enter the one-digit code that indicates the reason for termination.

1 = Obtained unsubsidized employment
2 = Obtained subsidized employment
3 = Engaged in another work activity (as defined under Section 407(d) of Act for the TANF Program)
4 = Engaged in other training
5 = Increased wages
9 = Other

Welfare-to-Work Data Report—Section Two Aggregated Data Collection for Families and Individuals Participating In the Welfare-to-Work Grant Program

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code. Tribes should enter ''00'' for this field.

2. *Tribal Code:* For Indian Tribes only, enter the three-digit Tribal code that represents your Tribe. States should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter—January—March
Second quarter—April—June
Third quarter—July—September
Fourth quarter—October—December

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (e.g., second quarter of 1997 is entered as ''19972''.)

Participating Families

For purposes of completing this report, include all families and individuals participating in services under the Welfare-to-Work (WtW) Program. All counts of families and individuals should be unduplicated monthly totals.

4. *Total Number of Families:* Enter the number of families that participated in the State (Tribal) WtW Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of Participants:* Enter the total number of participants in the State (Tribal) WtW Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of Non-Custodial Parents:* Enter the total number of non-custodial parents participating in the State (Tribal) WtW Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

7. *Total Number of Families Terminated:* For each month of the quarter, enter the number of families whose participation in the State (Tribal) WtW Program was terminated.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Participants Terminated:* For each month of the quarter, enter the total number of participants whose participation in the State (Tribal) WtW Program was terminated.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Non-Custodial Parents Terminated:* Enter the total number of non-custodial parents whose participation in the State (Tribal) WtW Program was terminated for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Expenditures

10. *Total Expenditures:* Enter the dollar value of all expenditures under the State (Tribal) WtW Program for the quarter. Round the amount of expenditure to the nearest dollar.

11. *Administrative Cost:* Enter the total dollar value of the WtW funds that were used

to cover administrative cost or overhead incurred in the WtW Programs for the quarter.

Appendix B—WtW Sampling Specifications

Title IV–A of the Social Security Act (Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, establishes the Temporary Assistance for Needy Families (TANF) program, which contains the data collection and reporting requirements for the State and Indian Tribal TANF Programs. The statute also gives States and Indian Tribes the authority to use scientifically acceptable sampling methods to comply with the data collection and reporting requirements of Section 411(a) of the Act. The Balanced Budget Act of 1997 amended the TANF program and established the Welfare-to-Work (WtW) program to help those welfare recipients with the greatest barriers to employment begin engaging in work activities and move from welfare assistance to permanent employment.

As amended, section 411(a) establishes as the WtW data collection and reporting requirements that all 411 (a) data (i.e., both the existing TANF data elements and the newly-added WtW data elements) must be reported for families and individuals participating in services funded under the WtW Program.

Listed below are the basic sampling specifications that States and Tribes must use until issuance of the final regulation. If a State (Tribe) opts to use sampling procedures and sample sizes, it must use an acceptable sampling methodology and sufficient large samples to make estimates over various sub-populations, e.g., the WtW expenditures by type of WtW service.

12. Sample Methodology

The standard statistical methodologies for sample selection are methods that conform to principles of probability sampling, e.g., for WtW, each family in the population of interest has a known, non-zero probability of selection into the sample and computational methods of estimation lead to a unique estimate. Suggested methods of sample selection include systematic random sampling and simple random sampling.

13. Sample frame(s)

For the families participating in services under the State (Tribal) WtW Program (i.e., the active sample), the monthly WtW sample frame must consist of an unduplicated list of all families with an individual(s) participating in services under the State (Tribal) WtW program.

14. Sample Size Requirement

If a State (Tribe) opts to report data for a sample of WtW families, sample size must be sufficiently large to obtain estimate with relative high precision. Listed below are the sample size requirements.

a. The minimum annual required sample size for families participating in services under the State (Tribal) WtW Program (i.e., the active WtW sample) is 1600 families. The 1600 families represents the number of case months for which data is collected and reported out of the total number of case months for which families participated in WtW services; (e.g., if a State has an average monthly WtW caseload of 1,000 families, it has a total of 12,000 case months).

b. The Statute requires States (Tribes) to collect data on a monthly basis and report data on a quarterly basis. Therefore, States (Tribes) must construct a sample frame for each month in the annual sample period and select approximately one-twelfth of the annual sample size from each monthly sample frame (approximately 133 families are to be selected each month from the above example).

d. Insufficient number of families on listing to meet minimum sample size requirements:

If a State (Tribe) does not have enough families participating in services under the WtW Program to meet the required annual sample size, the State (Tribe) should select 100% of such families.

f. Each State (Tribe) must submit the total unduplicated number of families participating in services under the State (Tribal) WtW Program by stratum for each month in the annual sample period. This data is required for weighting the sample results in order to produce estimates for the entire caseload.

APPENDIX C—WTW INTERIM FINAL RULE: STATUTORY REFERENCE TABLE FOR THE WELFARE-TO-WORK DATA REPORT—SECTION ONE

[Disaggregated Data Collection for Families and Individuals Participating in the Welfare-to-Work Grant Program]

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. Tribal Code	Implicit in administering data collection system.
3. Reporting Month	Implicit in administering data collection system.
4. Stratum	Implicit in administering data collection system.
5. Case Number—TANF	Implicit in administering data collection system.
6. Disposition—WtW	Implicit in administering data collection system.
7. Social Security Number	This information is readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). States may use it as the link with TANF records. We need this information for statistical purposes, such as evaluation of the WtW Program as required in section 413(j) and research as required in section 413(g) of the Act.
8. Average Hourly Wages	Section 411(a)(1)(A)(xviii)(III) requires States to report the wages paid to any participant in subsidized employment or on-the-job training. For more accurate reporting, ''wages paid'' is broken into average hourly wages and average hours of work.
9. Average Hours of Work	Section 411(a)(1)(A)(xviii)(III) requires States to report the wages paid to any participant in subsidized employment or on-the-job training. For more accurate reporting, ''wages paid'' is broken into average hourly wages and average hours of work. Section 411(a)(1)(A)(xviii)(IV).
10. Wage Subsidy	Required under section 411(a)(1)(A)(xviii)(III).
11. Community Service	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
12. Work Experience Program	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
13. Public Sector Employment Wage Subsidy	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
14. Private Sector Employment Wage Subsidy	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
15. On-the-Job Training	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
16. Job Readiness	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
17. Job Placement Services	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).

APPENDIX C—WTW INTERIM FINAL RULE: STATUTORY REFERENCE TABLE FOR THE WELFARE-TO-WORK DATA REPORT—SECTION ONE—Continued

[Disaggregated Data Collection for Families and Individuals Participating in the Welfare-to-Work Grant Program]

Data elements	Justification
18. Post-Employment Services	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
19. Job Retention Services	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
20. Supportive Services	Section 411(a)(1)(A)(xviii) (I) and (II) requires that States report the total amount expended during the month for each participant for each activity specified in section 403(a)(5)(C)(i).
21. Reason for Termination of Participation in WtW Activity.	Section 411(a)(1)(A)(xviii)(IV).

STATUTORY REFERENCE TABLE FOR THE WELFARE-TO-WORK DATA REPORT—SECTION TWO

[Aggregated data collection for families and individuals participating in the Welfare-to-Work Grant Program]

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. Tribal Code	Implicit in administering data collection system.
3. Calendar Quarter	Implicit in administering data collection system.
4 Total Number of Families	Section 411(a)(6).
5. Total Number of Participants	Section 411(a)(6).
6. Total Number of Non-Custodial Parents	Section 411(a)(4).
7. Total Number of Families Terminated	Section 411(a)(6).
8. Total Number of Participants Terminated	Section 411(a)(6).
9. Total Number of Non-custodial Parents Terminated.	Section 411(a)(4).
10. Total Expenditures	Section 411(a)(3).
11. Administrative Cost	Section 411(a)(2).

[FR Doc. 98–28840 Filed 10–28–98; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–98–4185 (HM–215C)]

RIN 2137–AD15

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends a requirement for the use of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and updates references in the Hazardous Materials Regulations (HMR) to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code) and the ICAO Technical Instructions. These amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and aircraft at the time these international regulations become effective.

DATES: *Effective date:* January 1, 1999.

Compliance date: Compliance with the regulation as amended in § 171.11(d)(4)(ii) is authorized immediately.

Incorporation by reference: The incorporation by reference of the publications listed in these amendments has been approved by the Director of the Federal Register effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bob Richard, Assistant International Standards Coordinator, telephone (202) 366–0656, or Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION: On August 18, 1998, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM–215C (63 FR 44312) which proposed changes to more fully align the HMR with the international regulations. Among the changes, RSPA proposed to amend the HMR to incorporate by reference the 1999–2000 ICAO Technical Instructions and Amendment 29 to the IMDG Code, and to make a shipping paper requirement notation permissive. RSPA received no adverse comments to these proposals. Therefore, these changes are adopted in this final rule.

Section 171.11 of the HMR authorizes hazardous materials shipments to be prepared in accordance with the ICAO Technical Instructions and transported by aircraft, and by motor vehicle either before or after being transported by aircraft, subject to certain conditions and limitations. Similarly, § 171.12 of the HMR authorizes hazardous materials shipments to be prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. Use of the latest versions of the ICAO Technical Instructions and the IMDG Code become mandatory for international hazardous materials shipments on January 1, 1999.

This final rule also amends a shipping paper requirement for the use of the ICAO Technical Instructions. In § 171.11(d)(4), as adopted under Docket HM–215B (FR 62 24700), published May 6, 1997, the letters ''ICAO'' were required to be included on shipping papers when being transported in accordance with the ICAO Technical

Instructions. The effective date of this requirement was October 1, 1998. Several months after publication of the final rule, RSPA received numerous comments opposing the change as an unnecessary economic burden. In the NPRM, RSPA proposed to make the requirement permissive. RSPA is incorporating the change in this final rule to minimize disruption to persons transporting hazardous materials in accordance with the ICAO Technical Instructions.

All other changes proposed to the HMR, under Docket HM–215C, will be addressed in a subsequent final rule.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The costs and benefits asociated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects.

This final rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be October 1, 1999 under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This final rule updates two incorporations by reference and relaxes one shipping paper requirement. The changes in this rule apply to offerors and carriers of hazardous materials and facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will be relieved of the need to comply with a dual system of regulations. The costs and benefits associated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Therefore, I certify that this will rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This final rule contains no new information collection burdens.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under International Civil Aviation Organization (ICAO), for the entry Technical Instructions for the Safe Transport of Dangerous Goods by Air, the date ''1997–1998 Edition'' is revised to read ''1999–2000 Edition''.

b. Under International Maritime Organization (IMO), for the entry ''International Maritime Dangerous Goods (IMDG) Code'', the wording ''Amendment 28 (1996)'' is revised to read ''Amendment 29 (1998)''.

3. In § 171.11, paragraph (d)(4)(ii) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(4) * * *

(ii) The shipping paper may include an indication that the shipment is being made under the provisions of this section or the letters ''ICAO.''

* * * * *

Issued in Washington, D.C. on October 22, 1998, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 98–28874 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980414095–8240–02; I.D. 102098C]

Fisheries of the Northeastern United States; Dealer Reporting Requirements

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

ACTION: Notification of deferral of Interactive Voice Response (IVR) System reporting requirements for certain species.

SUMMARY: NMFS defers IVR-reporting requirements for regulated Northeast (NE) multispecies (Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish and white hake), Atlantic mackerel, and butterfish. Based on data submitted by dealers and on other available information, the Regional Administrator (RA) has determined that landings of these species are not expected to reach levels that would cause the applicable target exploitation rate specified in the fishery management plan (FMP) for that species to be achieved, resulting in specific management changes. Therefore, federally permitted dealers are not required to report purchases of regulated NE multispecies, Atlantic mackerel, and butterfish through the IVR system until notification terminating the deferral for a given species is published in the **Federal Register**. Dealers must continue to report purchases of these species on the detailed written reports. Dealers must report, through the IVR system, purchases of species for which IVR reporting requirements have not been deferred: summer flounder, scup, black sea bass, *Illex* squid, and *Loligo* squid.

DATES: Effective November 1, 1998, until notification terminating the deferral for a given species is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kelley McGrath, (978)281–9307 or Gregory Power, (978) 281–9304.

SUPPLEMENTARY INFORMATION: In an effort to prevent overfishing and rebuild stocks, summer flounder, scup, black sea bass, regulated NE multispecies, Atlantic mackerel, *Illex* squid, *Loligo* squid, and butterfish are now managed by a quota or by other harvest limit. Regulations implementing the FMPs for these species were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are found at 50 CFR part 648. Successful management of quota-managed species is dependent upon NMFS having timely and accurate landing data available. These data will result in better monitoring of the quotas, fewer overages, and more accurate predictions of closure dates. In order to effectively monitor landings, NMFS issued a final rule (63 FR 52639, October 1, 1998) requiring federally permitted dealers to submit a weekly summary of purchases of quota-managed species through the IVR system within 3 days of the end of the reporting week. Regulations implementing the reporting requirements for federally permitted dealers are found at § 648.7.

To minimize the burden of dealer reporting requirements, the regulations implementing the use of an IVR system also include authorization (50 CFR 648.7(a)(2)(ii)) for the RA to defer the IVR reporting requirements for any species if landings are not expected to reach levels that would cause the applicable target exploitation rate specified in the FMP for that species to be exceeded. The RA has determined, based on the comprehensive written reports submitted by dealers and other available information, that the landing levels for regulated NE multispecies (Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake), and for Atlantic mackerel, and butterfish do not require IVR reporting. Therefore, the IVR reporting requirements are deferred for these species. If subsequent data indicate that landing levels for any of these species have increased to the extent that this determination ceases to be valid, the RA will terminate this deferral of that species by publishing notification in the **Federal Register**.

Pursuant to § 648.7(a)(2), dealers must report, through the IVR system, their purchases of the species for which IVR-reporting requirements have not been deferred. These species are summer flounder, scup, black sea bass, *Illex* squid, and *Loligo* squid.

As specified in 50 CFR 648.7(a)(1), dealers must continue to report purchases of all species, including those species for which IVR reporting has been deferred, on the detailed written reports.

Classification

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

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

Dated: October 23, 1998.

Bruce Morehead,

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

[FR Doc. 98–28902 Filed 10–23–98; 3:40 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 209
Thursday, October 29, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–035–2]

Importation of Orchids in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are advising the public that we are extending by 30 days the comment period for our proposed rule that would add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements. This extension will provide interested parties additional time to prepare their comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 98–035–1 that are received on or before December 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–035–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–035–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5786; e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1998, we published in the **Federal Register** (63 FR 46403–46406, Docket No. 98–035–1) a proposed rule to amend the regulations governing the importation of plants and plant products to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported in an approved growing medium subject to specified growing, inspection, and certification requirements.

Comments on the proposed rule were required to be received on or before November 2, 1998. However, in response to requests received following the publication of the proposed rule, we are extending by 30 days the comment period for the proposed rule. Therefore, we will consider all comments that are received on or before December 2, 1998.

Done in Washington, DC, this 23rd day of October, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–28997 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

RIN 0575–AC19

Processing Requests for Farm Labor Housing (LH) Loans and Grants

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), proposes to amend its regulations for the Farm Labor Housing (LH) program. This action is taken to implement a simplified application process in conjunction with an annual competitive funding cycle that will be announced in the **Federal Register**. The intended outcome is a streamlined application process that will be simpler and less costly for the applicant and will enable the Agency to process applications in a more efficient and timely manner.

DATES: Written comments on this proposed rule must be received on or before December 28, 1998.

ADDRESSES: Written comments may be submitted, *in duplicate*, to the Branch Chief, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW, Washington, D.C. 20250-0742. Comments may be submitted via the Internet by addressing them to ''comments@rus.usda.gov'' and must contain the word ''LH'' in the subject. All written comments will be available for public inspection at 3rd floor, 300 E Street, SW, Washington, D.C. 20546 during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Avenue, SW, Washington, D.C. 20250–0781, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under OMB Control Number 0575–0045. A Notice of Request for Extension of a Currently Approved Information Collection was published in the **Federal Register** (63 FR 28984) on May 27, 1998. This Notice did not contain the new provision of the regulation. Therefore, in accordance with the Paperwork Reduction Act of 1995, RHS is opening a 60-Day

comment period on the paperwork burden associated with this regulation.

Abstract: The Rural Housing Service (RHS) is authorized under Section 514, 516, and 521 of Title V of the Housing Act of 1949, as amended, to make initial and subsequent loans and grants to provide housing and related facilities for domestic farm labor. A loan only can be made to a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing and that is engaged in agricultural or aquacultural farming operations and which will own the housing and operate it on a nonprofit basis. A loan and/or grant can be made to public, private nonprofit organizations for domestic farm labor in areas where need exists. In some cases, rental assistance may be provided to eligible tenants.

RHS has the responsibility of assuring the public that funds for LH projects are financed to build, buy, improve, or repair farm labor housing and related facilities. The facilities financed are to have decent, safe and sanitary living conditions and are managed and operated as mandated by Congress. 7 CFR part 1944, subpart D was issued to set forth the policies and procedures and delegation of authority for making initial and subsequent insured loans under Section 514 and grants under Section 516 to provide housing and related facilities for domestic farm labor and to assure that applicable laws and authorities are carried out as intended.

With the provison of this regulation, RHS will be able to provide the financial assistance and necessary guidance to applicants in the development of their project proposals. It provides the Agency the capacity to meaningfully evaluate the feasibility of the proposed projects RHS will be able to assure Congress and the general public that all LH projects will be operated for purposes that are intended, and for the benefit of those they are mandated to serve.

There are no new requirements with this rule. However, it does restructure the submission of applicant information and supporting documentation for the proposed facility to be financed with RHS assistance. It also changes the timing of the submissions. For example, with a competitive NOFA system, we can be more applicant-friendly by requesting only essential information that responds to the selection criteria up front, relying on applicant certifications for eligibility, market, environmental data, and leverage. Only those applicants preliminarily selected under the competitive process would have to submit the specific information the agency would use in underwriting and approving the application.

The required information is collected on a project-by-project basis and is done so in accordance with the amended Housing Act of 1949, so that RHS can provide guidance and be assured of compliance with terms and conditions of loan, grant, and or subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11 hours per response.

Respondents: Farms, Not-for profit Institutions, and State, Local or Tribal Government.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 8,610 hours.

Copies of this information collection can be obtained from Michele Brooks, Regulations and Paperwork Management Branch, Support Services Division, as (202) 692–0036.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michele Brooks, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

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, RHS 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken in part as a result of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under number 10.405, Farm Labor Housing Loans and Grants.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this

action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background/Discussion

The farm labor housing program has two authorities in Title V of the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. The program also has tenant subsidies (rental assistance, or RA) available through section 521 (42 U.S.C. 1490a). The loans and grants authorized in sections 514 and 516 are the only sources of direct Federal financing available to public and private nonprofit organizations to construct housing and related facilities for America's farmworkers.

Both ''off-farm'' and ''on-farm'' housing are financed by the LH program. Off-farm housing is financed with loans and grants to nonprofit organizations (broad based, community development agencies) or to public agencies (such as local housing authorities). Housing built typically looks like conventional apartment complexes; however, occupancy is restricted to farmworkers. Rental assistance is available to occupants to assure unit affordability. On-farm housing is financed only with loans to a farmer or farm entity. Housing built typically is a single family dwelling unit. Occupancy is restricted to farmworkers or a farmworker family with at least one member of the household employed by the farm. No tenant subsidies are available. As provided by the authorizing statute, section 514 loans are subsidized to all borrowers with a one percent interest rate. Occupancy in both types of labor housing is restricted to United States citizens or legally admitted aliens.

The Rural Housing Service (RHS) proposes to revise current regulations for the LH program by establishing a competitive selection process for awarding funds to applicants for off-farm housing complexes. As the demand for program funds has steadily increased, it has become apparent that the first-come, first-served funding process in the current regulations is no longer a practical way of allocating funds for the construction of new off-farm units. It precludes setting priorities in awarding funds and has created long waiting periods by applicants for funds. On-farm housing will continue to be funded on a first-come, first-served basis, as the demand for these funds is more limited. Subsequent loans for repair and rehabilitation of existing LH facilities will be funded from a National Office reserve as needed.

Several factors have contributed to the increasing disparity between available funding in the LH program and demand. First, there is a large unmet demand for the program. Second, the Agency's efforts to encourage the development of LH units in underserved areas through technical assistance contractors has increased the number of applications from areas with a high farmworker population and limited housing. And finally, a growing number of existing LH units need upgrading and repair. Rehabilitation needs further strain the Agency's capacity to respond to requests for new facilities.

In the early 1990's, the application process took from 12 to 18 months from initial contact to obligation of funds. The increasing number of applications and declining amount of funds has increased the waiting period from initial contact to obligation of funds for some applicants. While the proposed regulations will not change the fact that some applicants may have to wait a year or more for funding, they will allow the Agency to prioritize funding to assure the highest priority applicants are funded as quickly as possible and reduce the burden on those not selected by returning applications not likely to be funded.

The Agency has spent considerable time assessing the different approaches to a competitive process and has informally solicited views from potential applicants on the proposed process. Potential applicants have indicated that they have limited funds to develop applications and do not have the resources to spend on market analyses, architectural and engineering services, and purchase of land unless they can be reimbursed for these expenses in a timely manner. Generally, these costs are eligible for inclusion in the loan or grant. Accordingly, RHS proposes to improve the application process by establishing a system that will move quickly to determine the highest priority proposals to be funded, to underwrite the application, and then to obligate funds within the same fiscal year.

Concerning the selection criteria within the competitive process, current and potential applicants and others familiar with the program have offered the following views which have been taken into account in the proposed regulation:

- Funds must continue to be available to serve areas with traditionally high use of the program and high farmworker populations based on local studies.
- Areas without a large concentration of farmworkers may have an unmet need for housing for farmworkers.
- Leveraged funds are needed to stretch LH resources and must be available within a timely manner to assure project feasibility.
- Not all areas or applicants have access to other resources, so other criteria are needed to balance leveraging.
- Community support is important for leveraging and zoning, but such support should not be a selection criterion.
- Given fund availability, the selection process should be done at the National level.
- Preference needs to be given to outstanding applications in the initial years of the new application process.

The Agency is particularly interested in comments and recommendations on the selection criteria and their relative weights. With a national competitive process, selection criteria would ideally compare different states and communities within the states and their relative needs for farmworker housing. However, reliable sources of national data are limited and, in order for the selection criteria to remain objective, the applicant's proposal must be able to be substantiated by reasonably available data. The proposed approach relies on the state's Consolidated Plan (used by states for housing needs funded by HUD), the state government's assessment of need for farmworker housing within the state, or other indicators of need identified in the notice of funding availability (NOFA). In the absence of state support and identification of need for such housing, are there other sources of information and indicators of need that the Agency could use as a fair selection criteria so that the program will reach proposals for high need areas within the state?

The Agency is interested, as well, in comments on the selection criterion providing 10 additional points to applications with leveraged funds from agriculture producers. Its purpose is to

encourage partnerships and support from the producers, who benefit by having good housing available to their farmworkers, even though no preference can be given to the workers of any individual producer or group of producers.

Under the proposed regulations, the Agency outlines a three-part process under a NOFA system. Annually, the Agency will announce the availability of funds and provide a timeframe for applicants to submit proposals (generally ranging from 45 to 90 days, depending on when funds are appropriated). The proposal must contain basic information on the applicant and the proposed housing complex to assure the applicant is eligible and the proposal feasible. Also, applicants will be asked to provide information that responds to the selection criteria. Points will be awarded for the selection criteria as specified in the regulation, and applications will be ranked in point score order. Those meeting the basic eligibility and feasibility requirements and ranking high enough to fall within the available funds will be requested to submit an initial application. Upon review and approval of the initial application, which includes comprehensive detail on the housing proposal, the Agency will request final documentation for application approval. Through this process, only applicants with a high potential for funding approval will be developing a complete application. Moreover, funding should be available within the fiscal year for all applicants invited to develop a complete application. However, to assure full use of funds, some applicants will also be selected as back-ups in case the selected proposals cannot meet the application submission schedule or are disapproved upon review of their application. Those applicants not selected will be advised of the reasons why and will be given the opportunity to reapply the following year.

Implementation Proposal

When the final rule becomes effective, the Agency will change from its current method of accepting loan requests to a NOFA system. The Agency anticipates publishing a final rule as soon as possible in FY 1999 to use FY 1999 funding. Under the current method, loan requests may be submitted throughout the year and are kept on hand until funds are available. Under the NOFA system, the amount of funds and application deadlines will be announced each funding cycle in the **Federal Register**. Loan requests will be reviewed and selected based on objective criteria in accordance with the revised regulations. Loan requests not selected for funding will be returned to the applicant.

The Agency proposes to advise LH applicants that have an unfunded application on hand at the end of FY 1998 that they are subject to the competitive process. The Agency requests comments on its intention to give points under the selection criteria for two years to applications that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application or had been reviewed and authorized by the National Office as of the publication date of this proposed rule. Furthermore, if a new proposal is submitted that ranks higher than an existing application or proposal under the selection criteria, the Agency will select it over the existing one.

Proposals on hand that have not been issued an AD–622 or reviewed and authorized by the National Office as of the publication date of this proposed rule will be returned to the applicant. Loan requests thus returned may, of course, be submitted for consideration when the NOFA is published.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended to read as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.579 is revised to read as follows:

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

4. Section 1944.153 is amended in the definition of ''Domestic farm laborer'' by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Development''; in the definition of ''Farm owner'' by revising the words ''subpart A of part 1944'' to read ''this section''; in the definition of ''Self-employed'' by revising the words ''District or State Director'' to read ''Loan Official or State Director'' and the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Development''; in the definition of ''Substantial portion of income'' by revising the two occurrences of the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Development''; and by adding in alphabetical order definitions to read as follows:

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

* * * * *

Consolidated Plan. A plan developed by a community or state, addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

* * * * *

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

* * * * *

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

LH. Farm Labor Housing.

* * * * *

MFH. Multi-Family Housing.

* * * * *

Needs assessment. A housing needs assessment completed by the state government.

NOFA. Notice of funds availability.

* * * * *

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

* * * * *

RHS. Rural Housing Service.

* * * * *

5. Section 1944.164 is amended in the introductory text of paragraph (d) in the first sentence by revising the words ''District Director'' to read ''Loan Official'' and the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; in paragraph (d)(1)(i) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; and by revising paragraph (b) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(b) *Maximum amount of grant.* The amount of any grant may not exceed the lessor of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals within the reach of low-income farmworker families. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

* * * * *

6. Section 1944.169 is amended by revising paragraph (a)(1) to read as follows:

§ 1944.169 Technical, legal, and other services.

(a) * * *

(1) When real estate is taken as security, the property will be appraised by a RHS employee authorized to make real estate apppraisals.

* * * * *

7. Section 1944.170 is amended by redesignating paragraphs (b) and (c) as (f) and (g) respectively; in newly redesignated paragraph (f) by revising all occurrences of the words ''District Director'' to read ''Loan Official'' and revising the two occurrences of ''an'' to read ''a''; in newly redesignated paragraph (g)(5)(i) by revising the reference ''§ 1944.164(b)(2)'' to read ''§ 1944.164(b)''; in newly redesignated paragraph (g)(5)(ii)(B) by revising the words ''an LH loan'' to read ''a LH loan''; in newly redesignated paragraph (g)(5)(ii)(C) by revising the reference ''paragraph (c)(5)(ii)(A)'' to read ''paragraph (g)(5)(i)''; and by revising the heading, the introductory paragraph, paragraph (a), and newly redesignated paragraph (g)(7), and by adding new paragraphs (b) through (e) to read as follows:

§ 1944.170 Application requirements and processing.

A three-stage application process will be used for new units in off-farm facilities. The first stage consists of a project proposal submitted by the applicant when the availability of funds is announced in the **Federal Register**. The project proposal is basic information that is used by the Agency to score and rank proposals and to determine preliminary eligibility. Applicants with the highest ranked proposals will be requested to submit a preapplication with more detailed information for underwriting (stage two). If the preapplication is determined eligible and feasible, the applicant will be invited to submit an application package (stage three). Loan requests for repair and rehabilitation of off-farm units and new units of on-farm housing will begin with the preapplication stage in accordance with paragraph (f) of this section. On-farm housing proposals will be processed on a first-come, first-served basis. Subsequent loans for repair and rehabilitation of existing LH facilities will be funded from a National Office reserve as needed.

(a) *Project proposals for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the **Federal Register** with deadlines for submitting project proposals. The notice will include the amount of funds available, any limits on the amount of individual loan and grant requests, the Agency's approach to assuring geographic diversity in the use of loan and grant funds, and the loan scoring criteria.

(2) Project proposals will be submitted in accordance with NOFA. Applicants will be required to provide the following information to describe their proposal and organizational structure which will be used by the Agency to determine preliminary eligibility and to score and rank proposals:

(i) Description of the project, including:

(A) The location of the project, including a description of the site, the availability of water, sewer, and utilities, and proximity to community facilities and services.

(B) Description of the proposed development, including the number of units by bedroom type, amenities such as carpets and drapes, related facilities such as a laundry room or community room, and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility.

(C) An economic feasibility analysis demonstrating the financial viability of the proposal, including the proposed rent structure, loan and grant ratio and need for rental assistance.

(D) Development time line.

(E) A description of the intended market area and a need and demand analysis in accordance with paragraph I.B. of Exhibit A–1 of this subpart.

(F) Development budget, including total and per unit cost.

(G) Evidence of site control, such as an option or sales contract.

(H) Description of any anticipated environmental issues based on a preliminary review.

(ii) Description of proposed financing, including:

(A) Amount of Agency funds requested.

(B) Information on leveraged funds, including the source, type, amount, rates and terms, and commitment status. To count as leveraged funds for purpose of the selection criteria:

(*1*) The funding date of the leveraged funds will permit processing of the loan request within the current funding cycle (the latest funding date for leveraged funds will be announced in NOFA), and

(*2*) The interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(*3*) For donated land to be scored as leveraged assistance, all of the following conditions must be met:

(*i*) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(*ii*) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(*iii*) The overall cost of the project is reduced by the donation of the land.

(iii) Preliminary documentation of the applicant's eligibility, including:

(A) Applicant name and type of organization, including contact person and title.

(B) Statement by applicant of its general financial condition.

(C) Statement of housing experience.

(iv) Any additional information specified in NOFA necessary to score and rank the applicant's proposal under the selection criteria.

(b) *Preliminary eligibility assessment of project proposals.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The project proposal was received by the submission deadline specified in NOFA;

(2) The project proposal is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking project proposals.* The Agency will score and rank off-farm project proposals for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria as specified in NOFA will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program eligible tenants at basic rents comparable to those if RHS provided full financing. Eligible types of leveraged assistance include loans and grants from other sources, contributions from the borrower, and tax abatements or other savings in operating costs provided that, when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Scoring will be based on the presence and extent of leveraged assistance for each proposal compared to the other proposals being reviewed, computed as a percent of the total development cost of the units. A total monetary value will be determined for leveraged assistance such as tax abatements or services in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. (0 to 20 points)

(ii) The proposed units will be developed in a place identified in the state Consolidated Plan, a needs assessment prepared by the state government, or other indicator of need (as published in NOFA) as a high need community for farmworker housing. (20 points)

(iii) The loan request is in support of an Agency initiative announced in NOFA. (0 to 20 points)

(iv) The housing proposal includes support services (such as health or child care) on-site, or the proposed housing complex is planned to be adjacent to such services in the community and the services are made available to the residents at an affordable cost under a cooperative agreement. (5 points for one service; 10 points for two or more services)

(v) The proposal reflects a minimum of 10 percent private agriculture producer contribution to the total development cost as leveraged funds (meeting the same timing and commitment requirements as other leveraged funds). (10 points over and above the points awarded under paragraph (c)(1)(i) of this section)

(vi) Projects whose occupants will derive the highest percentage of their income from on-farm agriculture work, compared to the other proposals being reviewed. (0 to 10 points)

(vii) Market areas not previously served by LH projects. (10 points)

(viii) Seasonal, temporary, or migrant housing. (5 points for up to 50 percent of the units; 10 points for 51 percent or more)

(ix) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or loan requests that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (10 points)

(2) The Agency will rank project proposals by point score. In the case of a point-score tie for proposals from the same State, the proposal offering the most support services will be given priority. Further same-State ties will be resolved by lottery.

(d) *Selection of project proposals for further processing.* (1) States will make a preliminary eligibility assessment and submit the proposals with their review comments to the National Office for selection through the National Office selection process.

(2) The National Office will score and rank the project proposals using the project selection criteria. For the purpose of achieving geographic or program diversity, the Agency reserves the right to select a loan request with a lower point score, as published in NOFA.

(3) The Agency will not select a proposal for a new LH loan in an area with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) The National Office will notify States of the proposals that have been selected and those that may be held as a back-up in the event a selected proposal is later withdrawn or rejected.

(5) Preapplications submitted by selected applicants will be processed in accordance with paragraph (f) of this section. If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not received within the timeframe established in the NOFA, the Agency will select the next ranked proposal for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be sent a letter inviting them to submit a preapplication package consisting of SF 424.2, ''Application for Federal Assistance (For Construction),'' and the information outlined in exhibit A–1 or A–2 of this subpart, as applicable. The applicant should be advised not to prepare a final application until notified to proceed.

(2) Applicants selected as back-ups will be sent a letter advising them that their proposal will be kept on hand in the event a selected proposal is withdrawn or rejected in the current funding cycle. Back-ups not processed in the current cycle will be returned to the applicant.

(3) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet the NOFA requirements, or those that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

* * * * *

(g) * * *

(7) After completing review of the preapplication material and determining

the amount of grant, the State Director will notify the Loan Official of the State Director's determination and authorize the Loan Official to prepare and execute Form AD–622. The Loan Official will forward the original to the applicant, a copy to the State Director, and a copy to the case file.

8. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

* * * * *

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. A notice of the availability of funds (NOFA) for off-farm facilities will be announced annually in the **Federal Register**, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

9. Exhibit A–1 to subpart D is amended by revising the introductory paragraph of section I.B. and paragraph I.B.3 to read as follows:

Exhibit A–1 to Subpart D—Information to be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. *Information to be submitted with SF 424.2 (for preapplication submission).*

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

Dated: October 22, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–28995 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–XV–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) requests public comment on development of a system of ''prompt corrective action'' to be taken by NCUA when a federally-insured credit union becomes undercapitalized. A new provision of the Federal Credit Union Act, as added by the Credit Union Membership Access Act, requires the NCUA Board to adopt, by regulation, a system of prompt corrective action indexed to each of five capital categories which the new provision establishes for federally-insured credit unions. Much of the system of prompt corrective action either is already prescribed by the new provision itself or is required to be comparable with the system Congress established for other federally-insured financial institutions in 1991. However, Congress has left to NCUA the responsibility to develop implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions. Information and comments from interested parties on these specific components will assist NCUA in carrying out its mandate to implement a system of prompt corrective action.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6362; or Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or telephone (703) 518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

On August 7, 1998, Congress enacted the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105–219, 112 Stat. 913 (1998). Section 103 of CUMAA added a new section 216 to the Federal Credit Union Act (FCUA), to be codified as 12 U.S.C. 1790d. New section 216(b)(1) requires the NCUA Board to adopt by regulation a system of ''prompt corrective action'' to be taken by NCUA when a federally-insured ''natural person'' credit union becomes undercapitalized. Congress requires NCUA's system of prompt corrective action to be ''comparable'' to the system it prescribed for the other federally-insured financial institutions in 1991 under section 38 of the Federal Deposit Insurance Act (FDIA § 38), 12 U.S.C. 1831o, as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102–242, 105 Stat. 2236 (1991).

Many of the regulations that will comprise NCUA's system of prompt corrective action are not open to substantive discretion in rulemaking. Section 216 (c) through (i) itself prescribes the substance of much of NCUA's system of prompt corrective action. To satisfy the requirement of ''comparability'' with FDIA § 38, NCUA's regulations will generally parallel those adopted by the other Federal banking agencies pursuant to FDIA § 38,[1] to the extent such regulations are applicable to credit unions. However, Congress has left to NCUA the responsibility for originating implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions and, thus, were not addressed in FDIA § 38. New § 216 (b)(2) and (d). The components on which NCUA seeks comment are:

1. The definition of a ''complex'' credit union;
2. The design of a ''risk-based net worth requirement'' to apply to ''complex'' credit unions;
3. The design of an alternative system of prompt corrective action for ''new'' credit unions (defined as less than 10 years old and having less than $10 million in assets); and
4. The criteria for an acceptable Net Worth Restoration Plan for under-capitalized credit unions.

[1] The Federal banking agencies consist of the Federal Reserve Board, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision. New § 216(o)(1) incorporating 12 U.S.C. 1813(z). Their Joint Final Rule establishing a system of prompt corrective action pursuant to FDIA § 38 is published at 57 FR 44886 (Sept. 29, 1992).

New § 216 (b)(2)(d) and (f)(5). NCUA seeks comment on these components. An opportunity to address all of the components of prompt corrective action will be provided in 1999 when NCUA issues proposed rules for comment.

B. Timetable

Congress has set a timetable for NCUA to propose for comment, and to finally adopt, implementing regulations for section 216. For all implementing regulations except those regarding the ''risk-based net worth requirement'' for ''complex'' credit unions, NCUA is required to propose rules no later than May 26, 1999, and to adopt final rules no later than February 7, 2000, which would become effective August 7, 2000. CUMAA § 301 (d)(1) and (e)(1).

A different timetable applies to implementing regulations for a single component of the prompt corrective action—the ''risk-based net worth requirement'' for ''complex'' credit unions. Congress requires NCUA to precede its proposed and final implementing rules with an Advance Notice of Proposed Rulemaking (ANPR) soliciting public comment on the ''risk-based net worth requirement'' only, to be published no later than February 3, 1999. CUMAA § 301(d)(2)(A). To fulfill that requirement, NCUA publishes this ANPR soliciting public comment not only on the ''risk-based net worth requirement'' for ''complex'' credit unions, but also on other components of prompt corrective action, unique to credit unions, for which Congress has directed NCUA to originate implementing regulations. No date is prescribed for proposing rules on the ''risk-based net worth requirement,'' but NCUA is required to adopt final rules no later than August 7, 2000, which would become effective January 1, 2001. CUMAA § 301 (d)(2)(B) and (e)(2).

Broad public input addressing these components will assist the NCUA Board in tailoring a system of prompt corrective action that is workable, fair and effective in light of the cooperative character of credit unions. *See* S. Rep. No. 193, 105th Cong., 2d Sess. 14 (1998) (S. Rep.).

C. Framework of Section 216

Like FDIA § 38, new section 216(c) establishes a framework of five capital categories based on the ratio of a credit union's net worth.[2] New section 216(e) through (i) then mandates specific prompt corrective actions indexed to each of the lower four categories. Most such actions impose progressively more stringent restrictions and requirements on credit unions; others permit or require NCUA to take administrative action, including conservatorship and liquidation.

1. *Well Capitalized.* A credit union is ''well capitalized'' if it has a net worth ratio of 7% or greater and, if it meets the definition of a ''complex'' credit union, also satisfies an additional ''risk-based net worth requirement.'' New § 216(c)(1)(A). A ''well capitalized'' credit union is not subject to any type of prompt corrective action under section 216.

2. *Adequately Capitalized.* A credit union is ''adequately capitalized'' if it has a net worth ratio of 6% or greater and, if it meets the definition of a ''complex'' credit union, also satisfies an additional ''risk-based net worth requirement.'' New § 216(c)(1)(B). To improve capital, an ''adequately capitalized'' credit union must annually set aside as net worth an amount equal to at least 0.4% of its total assets. New § 216(e). This is the only prompt corrective action required of a credit union that is ''adequately capitalized'' but not ''well capitalized.''

3. *Undercapitalized.* A credit union is ''undercapitalized'' if it has a net worth ratio of less than 6% or, if it meets the definition of a ''complex'' credit union, fails to satisfy an additional ''risk-based net worth requirement.'' New § 216(c)(1)(C). In addition to annually setting aside as net worth an amount equal to at least 0.4% of its total assets, an ''undercapitalized'' credit union also must timely submit and implement a Net Worth Restoration Plan which is accepted by the NCUA Board; must not allow its average total assets to increase unless and at a rate permitted by its Plan; and cannot increase the total amount of member business loans outstanding at any one time. New § 216(f)(1) and (g).

4. *Significantly Undercapitalized.* A credit union is ''significantly undercapitalized'' if it has a net worth ratio of less than 4%. However, a credit union which has a net worth ratio of between 4% and 4.99%, and otherwise would be ''undercapitalized,'' will instead be classified ''significantly undercapitalized'' if it has failed to timely submit or implement a Net Worth Restoration Plan acceptable to the NCUA Board (see infra section E.4.). New § 216(c)(1)(D). A ''significantly undercapitalized'' credit union is subject to all of the same prompt corrective actions as one which is ''undercapitalized.'' But in addition, NCUA is given the discretion to conserve or liquidate that credit union if it finds no reasonable prospect that it will become ''adequately capitalized.'' New §§ 206(h)(1)(F) and 207(a)(3)(A)(i) as added by CUMAA § 301(b)(1)(A)(iii) and (b)(2)(B).

5. *Critically Undercapitalized.* A credit union is ''critically undercapitalized'' if it has a net worth ratio of less than 2%. New § 216(c)(1)(E). A ''critically undercapitalized'' credit union is subject to all of the same prompt corrective actions as one which is ''significantly undercapitalized'' except that NCUA may now conserve or liquidate that credit union regardless whether there is a reasonable prospect that it will become ''adequately capitalized.'' New §§ 206(h)(1)(G) and 207(a)(3)(A)(ii) as added by CUMAA § 301(b)(1)(A)(iii) and (b)(2)(B). In addition, a ''critically undercapitalized'' credit union is subject to a timetable that, absent improvement in capital, leads to mandatory conservatorship or liquidation. Within 90 days of becoming ''critically undercapitalized,'' NCUA must either conserve or liquidate that credit union or ''take such other action . . . [that] would better achieve the purpose of [section 216], after documenting why the action would better achieve that purpose.'' New § 216(i)(1). NCUA's determination to take ''such other action'' in lieu of conservatorship or liquidation expires in 180 days. If that determination is not renewed, the credit union must be conserved or liquidated. New § 216(i)(2). If, after two renewals (*i.e.*, 18 months after first becoming ''critically undercapitalized''), the credit union remains ''critically underapitalized,'' on average, for a full calendar quarter, NCUA must liquidate unless the credit union (i) has been complying with a Net Worth Restoration Plan since the date it was approved; (ii) has positive net income or a sustainable upward trend in earnings; and (iii) is viable and not expected to fail. New § 216(i)(3).

D. Required Comparability With FDIA Section 38

1. Comparability

New section 216 is modeled on section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. Beginning in 1992, that provision mandated a system of prompt corrective

[2] ''Net worth ratio'' is defined as the ratio of a credit union's net worth to its total assets. New § 216(o)(3). The ''net worth'' of a credit union (other than a low-income credit union) is defined as its retained earnings balance as determined under GAAP. New § 216(o)(2)(A). Under GAAP, retained earnings consists of undivided earnings, statutory reserves, and other appropriations as defined by management or regulatory authorities. AICPA, *Audit & Accounting Guide: Audits of Credit Unions* at § 11.01 (1998).

action to apply to all FDIC-insured depository institutions. The purpose of prompt corrective action for federally-insured credit unions is to resolve problems at the least possible long-term loss to the National Credit Union Share Insurance Fund (the Fund). New § 216(a)(1). To carry out that purpose, Congress requires the NCUA Board to adopt regulations establishing a system of prompt corrective action that, in addition to being consistent with section 216, is ''comparable to section 38 of the Federal Deposit Insurance Act.''[3] New 216(b)(1)(A); S. Rep. at 12; H.R. Rep. No. 472, 105th Cong., 2d Sess. 23 (1998) (H.R. Rep. at 23).

''Comparable '' is defined as ''parallel in substance (though not necessarily identical in detail) and equivalent in rigor.'' S. Rep. at 12. NCUA interprets this to mean that its implementing regulations for section 216 should parallel those adopted by the Federal banking agencies to implement FDIA § 38, to the extent the latter regulations apply to credit unions. Conversely, NCUA's regulations will exclude prompt corrective actions under FDIA § 38 which are inapplicable to credit unions, such as requiring the sale of stock or subordinated debt to recapitalize or undergo a merger or acquisition, prohibiting the acceptance of deposits from correspondent institutions, requiring a bank holding company to obtain approval before making a capital distribution, and requiring divestiture of an institution. See U.S. Dept. of Treasury, *Credit Unions* (Washington, D.C. 1997) at 76 (Treasury Rep.).

NCUA invites commenters to identify the prompt corrective actions under FDIA § 38 which they believe do not apply to credit unions and should be excluded from NCUA's implementing regulations, as well as to address the components of prompt corrective action under section 216 which have no analog in FDIA § 38.

2. Report to Congress

To the extent that NCUA's prompt corrective action regulations are not parallel with an applicable provision of FDIA § 38, the NCUA Board is required to report that difference to Congress. The report to Congress must ''specifically explain . . . how the regulations differ from [FDIA § 38], and the reasons for those differences.''[4] CUMAA § 301(f); S. Rep. at 19; H.R. Rep. at 23. The report to Congress must be submitted either when the NCUA Board proposes its regulations for all but the ''risk-based net worth requirement'' (on or before May 26, 1999), or when it finally adopts such regulations (on or before February 7, 2000).

E. Components of Prompt Corrective Action Unique to Credit Unions

1. Definition of a ''Complex'' Credit Union

To be classified either ''well capitalized'' or ''adequately capitalized,'' a credit union that is deemed ''complex'' must satisfy a prescribed ''risk-based net worth requirement'' in addition to the corresponding statutory net worth ratio. New § 216(c)(1)(A)(ii) and (B)(ii). Similarly, a credit union that is deemed ''complex'' will be classified as ''undercapitalized'' if it fails to meet a prescribed ''risk-based net worth requirement,'' regardless whether it meets the corresponding statutory net worth ratio. New § 216(c)(1)(C)(ii). To set up this ''gateway'' for imposing the ''risk-based net worth requirement,'' new section 216 requires the NCUA Board to define a ''complex'' credit union ''based on the portfolios of assets and liabilities of credit unions.'' New § 216(d)(1).

FDIA § 38 gives no guidance in defining a ''complex'' credit union because it draws no distinction between ordinary and complex depository institutions; indeed, a ''risk-based capital requirement'' applies to all such institutions in all but the ''critically undercapitalized'' category. Joint Final Rule, 57 FR 44870 (Sept. 28, 1992). NCUA believes that the definition of a ''complex'' credit union should incorporate objective, risk-related numerical standards, derived from a credit union's balance sheet. This would serve the interests of uniformity and efficiency in two ways. First, credit unions would not be subject to unequal treatment as a result of subjective ''complexity'' determinations by NCUA and State credit union supervisors. Second, credit unions would be able to determine for themselves where they stand with respect to being deemed ''complex'' or not.

NCUA encourages commenters to address possible criteria for defining a credit union as ''complex'' according to the risk level of its portfolio of assets and liabilities. The following might be considered examples of such criteria:

(i) *Investments.* Whether the credit union's securities portfolio is subject to NCUA's 300 basis point ''shock test'' required when the sum of the fair value of ''certain fixed and variable rate securities''[5] the credit union holds exceeds its net capital, 12 CFR 703.90(b)–(c);

(ii) *Lending.* Whether the credit union's portfolio exceeds a certain threshold ratio of fixed-rate real estate mortgages;

(iii) *Borrowing.* Whether the credit union has exceeded a certain threshold ratio of borrowed funds; and

(iv) *CAMEL Components.* Whether the ''Capital'' and/or ''Asset'' components of the credit union's CAMEL rating are rated ''4'' or ''5.''

2. ''Risk-based Net Worth Requirements''

For each of the top three capital categories—''well capitalized,'' ''adequately capitalized'' and ''undercapitalized''—the NCUA Board is required to establish a separate ''risk-based net worth requirement'' that applies to credit unions that are deemed ''complex.'' New § 216(d)(1); compare 12 U.S.C. 1831o(c)(1)(A). The ''risk-based net worth requirement'' must ''take account of any material risks against which the [6% net worth ratio required to be ''adequately capitalized''] may not provide adequate protection.'' New § 216(d)(2). To this end, NCUA will consider whether a credit union having a 6% net worth ratio is adequately protected against interest rate risk, market risks, credit risk, risks posed by contingent liabilities, and other relevant risks. S. Rep. at 14. The design of the risk-based net worth requirement will reflect a reasoned judgment about the actual risks involved. *Id.*

FDIA § 38 required the Federal banking agencies to develop a ''risk-based capital requirement'' to include among the ''relevant capital measures'' used to classify insured institutions among the five capital categories. 12 U.S.C. 1831o(c)(1). To fulfill that requirement, the Federal banking agencies adopted two separate measures which are independent of the ''leverage ratio'' (the equivalent of ''net worth ratio'')—the ''ratio of total capital to risk-weighted assets'' and the ''ratio of

[3] To this end, in developing regulations to implement new section 216, the NCUA Board is required to consult with the Secretary of the Treasury, the other Federal banking agencies (which apply prompt corrective action under FDIA § 38), and State officials having jurisdiction over State-chartered, federally-insured credit unions. CUMAA § 301(c).

[4] The Report to Congress also must explain how NCUA's regulations take into account the cooperative character of credit unions, i.e., that credit unions are not-for-profit cooperatives that do not issue stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers. New § 216(b)(1)(B).

[5] Such securities are defined as having embedded options; or remaining maturities greater than three years; or coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index. 12 CFR 703.90(b).

Tier 1 capital to risk-weighted assets.''[6] 57 FR at 44870.

NCUA is considering a ''risk-based net worth requirement'' that consists of a basis points (b.p.) add-on to the existing statutory net worth ratio for each of the ''well capitalized,'' ''adequately capitalized'' and ''undercapitalized'' categories. The amount of the add-on would not necessarily be the same for each category. For example, a uniform 100 b.p. increase in the net worth ratio for each category would be reflected as follows. An otherwise ''well capitalized'' credit union (having a net worth ratio of 7% or greater) that is deemed ''complex'' would be required to achieve a net worth ratio of 8% or greater (7% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'') to be classified ''well capitalized.'' An otherwise ''adequately capitalized'' credit union (having a net worth ratio of 6% or greater) that is deemed ''complex'' would be required to achieve a net worth ratio of 7% or greater (6% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'') to be classified ''adequately capitalized.'' Conversely, an otherwise ''undercapitalized'' credit union (having a net worth ratio of less than 6%) that is deemed ''complex'' still would be ''undercapitalized'' unless it achieved a net worth ratio of 7% (6% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'').

NCUA invites comment on the concept of supplementing applicable statutory net worth ratios, on the notion of establishing risk-weighted ratios that are independent of the statutory net worth ratios, as well as alternative designs for a ''risk-based net worth requirement.''

3. Alternative Rules for ''New'' Credit Unions

For ''new'' credit unions, the NCUA Board is required to prescribe an alternative system of prompt corrective action to apply in lieu of the system prescribed by section 216 for existing credit unions. New § 216(b)(2)(A); see also Treasury Rep. at 79. The alternative system of prompt corrective action for ''new'' credit unions must be designed to:

(i) Carry out the purpose of section 216, i.e., to solve problems at the least possible long-term loss to the Fund;

(ii) Recognize that new credit unions initially have no net worth, and give them reasonable time to accumulate net worth;

(iii) Create incentives for new credit unions to become adequately capitalized by the time they either have been in operation for more than 10 years or have more than $10 million in total assets;

(iv) Impose appropriate restrictions and requirements on new credit unions that do not make sufficient progress toward becoming adequately capitalized; and

(v) Prevent evasion of the purpose of section 216 (e.g., an existing credit union merges with a smaller, new credit union and classifies itself as a ''new'' credit union to avoid the requirements of section 216).

New § 216(b)(2)(B).

Section 216(o)(4) defines a ''new'' credit union as having been in operation for less than 10 years and having $10 million or less in total assets. This is a significant expansion of the definition in section 116 of the FCUA, which CUMAA repeals. CUMAA § 301(g)(3). Section 116 defined a ''new'' credit union as having been in operation less than 4 years or having assets of less than $500,000. 12 U.S.C. 1762(a)(2).

Under section 116, a ''new'' credit union was required to set aside 10% of gross income until its regular reserve (i.e., capital) reached 7.5% of total outstanding loans and risk assets, and thereafter to set aside 5% of gross income until the regular reserve reached 10% of total outstanding loans and risk assets. Id.; see also 12 CFR 702.2(a); U.S. Dept. of Treasury, *Modernizing The Financial System* (Washington, D.C. 1991) at XIII–3. Under section 216(e), existing credit unions that are less than ''well capitalized'' ordinarily are required to annually set aside as net worth an amount equal to at least 0.4% of total assets until attaining a net worth ratio of 7%.[7] The conceptual distinction between old section 116 and new section 216 is that under the former the reserve transfer was calculated as a percentage of gross income, under the latter it is calculated as a percentage of total assets.

NCUA proposes to establish a graduated timetable to allow ''new'' credit unions to build capital toward the statutory net worth level for each capital category. NCUA solicits comment on whether to adopt the same approach as section 216 now mandates for improving the capital of existing credit unions—requiring a ''new'' credit union to annually set aside as net worth a certain percentage total assets. New § 216(e). The percentage of the annual transfer to net worth might be reduced progressively as the ''new'' credit union attains a higher capital category.

4. Net Worth Restoration Plan

Any credit union which is ''undercapitalized'', ''significantly undercapitalized'' or ''critically undercapitalized'' must, among other prompt corrective actions, submit an acceptable Net Worth Restoration Plan (the Plan) to the NCUA Board. New § 216(f)(1). The Plan is required to be submitted within a reasonable time prescribed by the NCUA Board, which must act expeditiously to decide whether the Plan is acceptable. New § 216(f)(3). The NCUA Board may accept a Plan only if it determines that the Plan ''is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union.'' New § 216(f)(5). Apart from this standard, the NCUA Board needs to establish criteria for credit unions to rely upon in preparing a Plan that will be ''acceptable.''

FDIA § 38 requires an undercapitalized institution to submit a ''capital restoration plan'' (capital plan) which specifies:

(i) Steps the institution will take to become ''adequately capitalized'';

(ii) The levels of capital the institution expects to attain in each year that the plan is in effect;

(iii) How the institution will comply with the prompt corrective action restrictions and requirements imposed under FDIA § 38; and

(iv) The types and levels of activities in which the institution will engage.

12 U.S.C. 1831o(e)(2)(B)(i). To be accepted, a capital plan must meet the following statutory criteria:

(i) Contain the statutorily-required information described above;

(ii) Be based on realistic assumptions and be likely to succeed in restoring the institution's capital; and

(iii) Would not appreciably increase risk (including credit risk, interest rate risk, and other types of risk) to which the institution is exposed.

12 U.S.C. 1831o(e)(2)(C)(i). Although FDIA § 38 authorized the Federal banking agencies to adopt regulations requiring a capital plan to include additional information, the agencies declined to do so. 57 FR at 44878.

Section 216(f)(5) prescribes for a Net Worth Restoration Plan only one of FDIA § 38's criteria—that the Plan be based on realistic assumptions and be likely to succeed in

[6] The total risk-based capital ration is set at 500 basis points above the leverage ration for the ''well capitalized'' category, and at 400 basis points above the leverage ratio for the ''adequately capitalized'' and ''undercapitalized categories. The Tier-1 risk-based capital ratio is set at 100 basis points above the leverage ratio for the ''well capitalized'' category, and at the same level as the leverage ratio for the ''adequately capitalized'' and ''undercapitalized'' categories. 57 FR at 44867.

[7] Section 216(e)(2)(A) gives the NCUA Board the authority to adjust the amount of the 0.4% reserve transfer, on a case-by-case basis, if necessary to avoid a significant redemption of shares and to further the purpose of section 216.

restoring a credit union's capital. NCUA seeks comment on whether to add, by regulation, all or a combination of some of the other FDIA § 38 content prerequisites and acceptability criteria enumerated above, and on the time frame for submitting and implementing a Net Worth Restoration Plan. In addition, NCUA welcomes input on this model generally, as well as on alternative and/or additional content prerequisites and acceptability requirements for credit union Net Worth Restoration Plans.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–28875 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA is proposing to incorporate into its regulations the agency's longstanding interpretation that federal credit unions (FCUs) are authorized, within limits, to make charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone:

(703) 518–6540.

SUPPLEMENTARY INFORMATION:

NCUA has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statements (IRPS) 87–2, Developing and Reviewing Government Regulations. As part of this regulatory review program, NCUA also reviews its IRPS to determine their current effectiveness.

NCUA issued IRPS 79–6 to clarify its position on FCUs making charitable contributions and donations. 44 FR 56691 (October 2, 1979). In IRPS 79–6, NCUA acknowledged the benefits associated with FCUs making charitable contributions and donations. Also, NCUA stated that the making of charitable contributions and donations is an activity incidental to an FCU's business within the scope of powers set forth in the Federal Credit Union Act. 12 U.S.C. 1757(17).

As a result of the review of IRPS 79–6, NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations. Accordingly, NCUA is proposing to add a new § 701.25 that will incorporate the policies of IRPS 79–6 into NCUA regulations. This new rule will be located in part 701 so it will be in the same place as other regulatory provisions regarding the organization and operations of FCUs. The language of the new rule is somewhat different from that of the IRPS, but the rationale and limitations are the same.

This proposal addresses charitable contributions and donations only and does not include political contributions and donations of FCUs, which are governed by the Federal Election Campaign Act (2 U.S.C. 441b). Additionally, all charitable contributions and donations by FCUs must be made in accordance with applicable Federal Credit Union Bylaws including those addressing conflicts of interest and FCU board of directors meetings. FCU Bylaws Art. XIX, § 4 and Art. VIII, § 8. Finally, NCUA intends that an FCU's board of directors, if it chooses, can establish a budget for charitable contributions and donations and authorize an executive committee of directors or appropriate FCU senior officials to disburse those funds in accordance with the proposal.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. .

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposal only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for purposes of Executive Order 12612.

List of Subjects in 12 CFR Part 701

Charitable contributions, Credit unions.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR part 701 be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended by adding § 701.25 to read as follows:

§ 701.25 Charitable contributions and donations.

(a) A federal credit union may make charitable contributions and/or donate funds only to:

(1) An organization that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and is located in or conducts its activities in a community in which the federal credit union has a principal place of business; or

(2) An organization that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code

and operates primarily to promote and develop credit unions.

(b) The board of directors must approve charitable contributions and/or donations, and the approval must be based on a determination by the board of directors that the contributions and/or donations are in the best interests of the credit union and are reasonable given the financial condition of the credit union.

[FR Doc. 98–28878 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Statutory Lien

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NCUA proposes to update, clarify and convert to a regulation the provisions of its existing Interpretive Ruling and Policy Statement (''IRPS''), which implements the Federal Credit Union Act's authority to establish a statutory lien. Like the IRPS, the proposed rule will permit a federal credit union to impress a statutory lien upon the shares and dividends of a member, and to enforce that lien to satisfy the member's outstanding indebtedness to the credit union, even when such indebtedness is not secured by shares.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Division of Litigation & Liquidations, Office of General Counsel, at the above address or telephone: (703) 518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11) (hereinafter ''§ 1757(11)''), provides that a federal credit union ''shall have [the] power . . . to impress and enforce a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or charges payable by him.'' Beginning in 1979, NCUA took the position that a federal credit union could enforce the lien granted by § 1757(11) only after it had obtained a court judgment on the debt, unless state law allowed enforcement of the lien without first obtaining such a judgment. NCUA, *Manual of Laws Affecting Federal Credit Unions* 1–17 (6/78 ed.); NCUA, *Credit Manual for Federal Credit Unions* 29 (12/79 ed.). Once the prerequisite judgment was obtained, the credit union could apply the member's shares to his or her outstanding loan balance.

In 1982, NCUA reconsidered this interpretation of § 1757(11) because of experience indicating that it placed credit unions at a disadvantage compared to other financial institutions, which usually can offset a borrower's loan without first obtaining a court judgment. 47 FR 44340 (October 7, 1982). As a result, NCUA issued Interpretive Ruling and Policy Statement No. 82–5 (''IRPS 82–5''), reinterpreting § 1757(11) to authorize a credit union to enforce the lien on the shares and dividends of a member without first obtaining a court judgment against the member, state law to the contrary notwithstanding. 47 FR 57483 (December 27, 1982). The NCUA Board concluded, and still maintains, that the reinterpretation of § 1757(11) is more consistent with Congressional intent.

In 1987, NCUA issued Interpretive Ruling and Policy Statement No. 87–2 entitled ''Developing and Reviewing Government Regulations,'' 52 FR 35231 (Sept. 18, 1987) (''IRPS 87–2''). IRPS 87–2 established the policy of reviewing all existing NCUA regulations every three years for the purpose of updating, clarifying and simplifying them, and eliminating redundant and unnecessary provisions. *Id.* at 35232. Following a plain English question and answer format, the proposed rule is intended to fulfill that purpose.

B. Principal Differences Between IRPS 82–5 and Proposed Rule

The principal difference between IRPS 82–5 and the proposed rule is the requirement in § 701.39(b)(1) and (3) that the credit union give written notice to its member at the time it impresses a statutory lien on that member's account(s). But for such written notice, the member would not necessarily be aware when the credit union impresses a lien either by notation on its records of the member's account(s) or through a duly adopted by-law generally establishing a lien on members' accounts.

The proposed rule also resolves two ambiguities in IRPS 82–5 and recent editions of NCUA's ''Examiner's Guide.'' See, e.g., NCUA *Examiner's Guide* 9–96 (6/97 ed.). First, the rule reiterates NCUA policy permitting a statutory lien only to offset a member's outstanding indebtedness to the credit union, not to offset other outstanding financial obligations of the member to the credit union. Proposed § 701.39(a)(4). Second, the rule distinguishes a statutory lien from a share secured loan by emphasizing that until a statutory lien is enforced, following a member's default, the member is permitted to make withdrawals from the impressed account(s) even to a level below that of the outstanding indebtedness. Proposed § 701.39(c)(2).

C. Section 701.39(a)—What is a Statutory Lien?

1. Definition

The proposed rule defines a statutory lien under § 1757(11) as a security interest in a member's shares and dividends equal to the amount of the member's indebtedness to the credit union. Proposed § 701.39(a)(1). The security interest established by the lien gives the credit union a superior claim over all other creditors when claims are asserted against the member's account(s). Id. at § 701.39(a)(2). See D. Bridewell, *Bridewell on Credit Unions* 710 (1942 ed.).

2. ''Floating'' Lien

The NCUA Board continues to believe that Congress intended for the statutory lien to be a ''floating'' lien. When a federal credit union impresses a lien on a member's accounts, it retains the lien on those accounts from that date forward through the term of the loan, to the extent of the unpaid loan balance together with interest, fees and other charges attributable to the loan. The lien ''floats'' as the outstanding balance of the indebtedness varies from time to time, and as the member's account balance is reduced by withdrawals or increased by deposits or dividend payments. When the statutory lien is enforced, it applies to all funds in the account at that point, the amount of which may well be less than the outstanding balance of the indebtedness.

3. Preemption

The proposed rule expressly provides that § 1757(11) preempts state law. Proposed § 701.39(a)(3). This means that the proposed rule overrides the equitable right of set-off, as well as state statutory and decisional law governing a creditor's right to impress and enforce a lien. Many state laws require a

creditor to obtain a court judgment on the debt before enforcing a lien. The NCUA Board continues to maintain that federal credit unions should be free of this restraint, as are other federally-insured financial institutions. Accordingly, the proposed rule specifically provides, apart from general preemption, that a court judgment on the member's debt is not a prerequisite to enforcing a statutory lien. Proposed § 701.39(c)(3).

4. Member's Indebtedness

While § 1757(11) can be read to apply to member financial obligations beyond indebtedness to the credit union, the proposed rule reiterates NCUA policy limiting its application to a member's outstanding indebtedness and related charges. Proposed § 701.39(a)(4). For example, a statutory lien could be used to offset unpaid loan principal and interest and charges related to the loan, such as a late fee and collection expenses. But the statutory lien cannot be used to offset financial obligations outside the context of indebtedness to the credit union, such as a returned check charge, safe deposit box rental fee or overdraft on a withdrawal from an Automatic Teller Machine. It may be possible to offset such financial obligations under a federal credit union's statutory authority to receive payments on shares, 12 U.S.C. 1757(6), and to exercise incidental powers, 12 U.S.C. 1757(17), provided that the credit union has duly adopted a nonstandard by-law or board policy establishing its right to do so. See also 12 C.F.R. 701.35.

A member is indebted to the credit union if he or she is the maker or co-maker of a note or equivalent instrument establishing his, her or their personal indebtedness to the credit union. Whereas IRPS 82–5 was silent on guarantor liability, the proposed rule provides that a member who co-signs as a guarantor of the indebtedness of another member also is considered to be indebted to the credit union. Proposed § 701.39(a)(4). Thus, the credit union account(s) of the guarantor also may be impressed with a statutory lien. If the maker of the note or equivalent instrument then defaults, the credit union can enforce the statutory lien on the guarantor's account, thereby effecting the agreement to guarantee the maker's indebtedness to the credit union.

5. Exemptions

Certain forms of indebtedness to a credit union cannot be collected by means of a statutory lien. In the case of outstanding indebtedness due to extensions of credit under a credit card program, the Truth in Lending Act, 15 U.S.C. 1666h, and Regulation Z, 12 C.F.R. 226.12(d), both apply to generally prohibit a federal credit union from offsetting against a member's account that member's indebtedness arising from a consumer credit transaction under a credit card plan. In the case of a member's Individual Retirement Account (''IRA''), the Internal Revenue Code, 26 U.S.C. 408(a)(4), provides that the ''interest of an individual in the balance of his account is nonforfeitable,'' thus barring a credit union, as trustee of the IRA, from impressing a statutory lien on an IRA. See *In re McDaniel,* 41 B.R. 132 (Bankr. W.D. Tex. 1984); *In re Dunn,* 5 B.R. 156 (Bankr. N.D. Tex. 1980). Finally, in the case of a member who is in bankruptcy, if the bankruptcy court issues an automatic ''stay'' of all creditor claims against the member, 11 U.S.C. 362(a)(7), the credit union is prohibited from enforcing its statutory lien on the member's account(s) while the stay is in effect.

6. Limitations

Apart from outright exemptions, credit unions should be aware that certain types of ownership interests in a credit union account will limit the extent to which a credit union can enforce a statutory lien under § 1757(11). For example, in the case of an account held as a tenancy in common between members, a statutory lien would be enforceable only against the debtor's 50% interest in the contents of the account (absent evidence of a disproportionate interest). No such limitation on enforcement generally exists with accounts held individually, or as a joint tenancy, or as a tenancy by the entirety between married members.

D. Section 701.39(b)—How is a Statutory Lien Impressed?

1. Impressing a Lien

A credit union may impress a statutory lien in either of three ways: (1) by noting the existence of the lien in the credit union's records of the member's account(s) and giving notice thereof to the member at the time the loan is granted, § 701.39(b)(1); (2) by reciting in a loan document signed by the member that shares and dividends are subject to the lien, § 701.39(b)(2); or (3) by duly adopting a by-law establishing a statutory lien to satisfy its members' delinquent indebtedness, and giving notice of the by-law to the member at the time the loan is granted, § 701.39(b)(3). See, e.g., *Federal Credit Union Bylaws,* Art. III, § 5(d) (12/87 ed.). See *Credit Manual for Federal Credit Unions* 16–17 (May 1972 ed.).

2. Notice

To ensure that members are aware when their credit union impresses a statutory lien on their accounts, proposed § 701.39(b)(1) and (2) require the credit union to give written notice to the member, contemporaneously with granting the loan, that the credit union is either noting the statutory lien on its records of the member's account(s), or is impressing the lien on those accounts through a duly adopted by-law authorizing the credit union to do so. The notice requirement applies whether the member is the borrower or is the guarantor of another member who is the borrower. Separate notice to the member is not required when a statutory lien is recited in a loan document signed by the member, § 701.39(b)(2), because the member is presumed to have read any document he or she signs, and thus to have become aware of the statutory lien.

E. Section 701.39(d)—How is a Statutory Lien Enforced?

1. Enforcement

Generally, a credit union may enforce its lien on the shares and dividends of the member by debiting the member's account and applying the funds to satisfy the outstanding indebtedness. Section 1757(11) preempts state law, meaning that a credit union is not required to follow state laws governing liens, nor to exercise the equitable right of set-off. In particular, this means that a credit union does not have to obtain a court judgment on the member's indebtedness before enforcing the lien, even if the state law requires a creditor to do so as a prerequisite to enforcement.

2. Statutory Lien Versus Share Secured Loan

A statutory lien differs from a loan secured by the member's pledge of his or her shares, commonly known as a ''share secured loan.'' In the case of a share secured loan, the member is not allowed to withdraw shares to a level below the outstanding balance of the indebtedness at any time during the term of the loan, regardless whether the member is current on the loan. See NCUA, *Credit Manual for Federal Credit Unions* 28 (12/79 ed.). See, e.g., *Federal Credit Union Bylaws* Art. III, § 5(c) (12/87 ed.). In contrast, when a statutory lien has been impressed, a credit union may permit routine withdrawals from the member's account without waiving the statutory lien, even if the withdrawals would reduce the account balance to a level below that of the outstanding balance of the indebtedness. Only when the credit

union enforces the lien, following the member's default, can it then bar the member from making withdrawals. When enforced, the statutory lien applies to all funds then in the account(s); due to prior withdrawals, those funds may amount to less than the outstanding balance of the indebtedness.

F. Withdrawal of Current Interpretive Ruling and Policy Statement

Concurrent with adoption of the proposed rule regarding the statutory lien, the NCUA Board will withdraw the current IRPS 82–5 regarding the statutory lien, 47 FR 57483 (December 27, 1982).

G. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The proposed rule on the statutory lien would reduce existing regulatory burdens. Therefore, the NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a Regulatory Flexibility Analysis is not required.

2. Paperwork Reduction Act

The proposed rule has no information collection requirements. Therefore, no Paperwork Reduction Act analysis is required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule does not apply to State-chartered credit unions and, thus, would not effect State interests. Therefore, no analysis is required.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Liens, Mortgages, Reporting and recordkeeping requirements, Surety bonds, Statutory liens.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR chapter VII be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended to add § 701.39 to read as follows:

§ 701.39 Statutory lien.

(a) *What is a statutory lien?* (1) *Definition.* A statutory lien is the power granted by section 107(11) of the Federal Credit Union Act (the Act), 12 U.S.C. 1757(11), to a federal credit union to impress (*i.e.,* to establish) a security interest in a member's shares and dividends equal to the amount of that member's indebtedness to the credit union, as that amount varies from time to time.

(2) *Superior claim.* A statutory lien gives the federal credit union priority over all other creditors when claims are asserted against the member's account(s).

(3) *Preemption.* A statutory lien pursuant to section 107(11) of the Act, 12 U.S.C. 1757(11), preempts state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off.

(4) *Member's indebtedness.* A statutory lien may be applied to a member's account(s) only to satisfy a member's outstanding indebtedness to the credit union, such as loan principal and interest and other charges attributable to the indebtedness. For purposes of this section, a member is considered to be indebted to the credit union if he or she is the maker, co-maker or guarantor of a note or equivalent instrument establishing indebtedness to the credit union.

(5) *Exemptions.* To the extent provided by federal law—(i) A statutory lien may not be impressed on a member's Individual Retirement Account;

(ii) A statutory lien cannot be enforced to offset a member's indebtedness arising from a consumer credit transaction under a credit card plan;

(iii) A statutory lien cannot be enforced against the account of a member who is the subject of bankruptcy proceeding when a ''stay'' order of the bankruptcy court, issued pursuant to 11 U.S.C. 362, is in effect.

(b) *How is a statutory lien impressed?* A credit union can impress a statutory lien on a member's account(s)—

(1) *Account records.* By noting the existence of the lien on the credit union's records of the member's account(s) and providing written notice thereof to the member at the time the loan is granted; or

(2) *Loan documents.* In the case of a loan, by reciting in a loan document signed by the borrower that a statutory lien is impressed on his or her shares; or

(3) *By-Law.* Through a duly adopted credit union by-law or board policy establishing a statutory lien on member accounts, provided that written notice of such by-law or board policy is given to the borrower at the time the loan is granted.

(c) *How is a statutory lien enforced?* (1) *Application of funds.* A federal credit union may enforce its statutory lien on a member's account by debiting the balance of funds in the account and applying it to offset the member's outstanding indebtedness, including unpaid loan principal and interest, and fees and charges attributable to the indebtedness.

(2) *Default required.* A federal credit union may enforce its statutory lien on a member's accounts only when the member is in default on his indebtedness to the credit union.

(3) *Judgment not required.* A federal credit union need not obtain a court judgment on the member's debt prior to enforcing its statutory lien on the member's account.

[FR Doc. 98–28877 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) proposes to revise its rule regarding management interlocks. The proposal conforms the interlocks rule to recent statutory changes, and was drafted through a coordinated effort among the following other federal financial regulatory agencies; the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision

(OTS). The proposal also modernizes and clarifies the rule, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (the Interlocks Act) generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The Interlocks Act exempts interlocking arrangements between credit unions and, therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions—banks and thrifts and their holding companies.

The scope of the prohibition depends on the size and location of the involved organizations. For instance, the Interlocks Act prohibits unaffiliated depository organizations, regardless of size, from establishing an interlock if both organizations have an office in the same community (the community prohibition). Unaffiliated depository organizations may not form an interlock if both organizations have total assets of $20 million or more and are located in the same Relevant Metropolitan Statistical Area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits unaffiliated depository organizations, regardless of location, from establishing an interlock if each organization has total assets exceeding specified thresholds (the major assets prohibition).

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR Act) amended §§ 204, 206, and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207).[1]

Section 2210(a) of EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding $1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding $500 million, regardless of the location of the organizations or their depository institution affiliates.[2] The EGRPR Act raised the thresholds to $2.5 billion and $1.5 billion, respectively. The revision also authorized NCUA to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather and diversified savings and loan holding company exemptions in 12 U.S.C. 3205. Prior to the EGRPR Act, these exemptions were subject to a 20-year time limit beginning November 10, 1978. The EGRPR Act amended § 3205(a) to permit persons who began dual service as management officials of more than one depository organization before November 10, 1978, to continue such service indefinitely. Similarly, § 3205(b) was amended to permit a person who serves as a management official of a depository organization and of a company that is not a depository holding company to continue to serve as an official of both entities indefinitely if the non-depository organization becomes a diversified savings and loan holding company. The EGRPR Act also repealed § 3205(c). That provision, which mandated agency review of grandfathered interlocks before March 1995, became outdated.

The EGRPR Act also amended 12 U.S.C. 3207 to provide that NCUA may adopt ''regulations that permit service by a management official that would otherwise be prohibited by [the community, RMSA, or major assets prohibitions], if such service would not result in a monopoly or substantial lessening of competition.'' This change repealed the specific ''regulatory standards'' and ''management consignment'' exemptions added by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),[3] and restored the NCUA's broad authority to create regulatory exemptions to the statutory prohibitions on interlocks.

II. Discussion of Proposed Regulations

The proposal reflects these statutory changes. This proposal also renews an earlier proposal for a small market share exemption that had been advanced by the FRB, OCC and FDIC before enactment of the CDRI Act. NCUA invites comments on all aspects of this proposal.

A. Definitions

Current NCUA regulations define key terms implementing the Interlocks Act. A number of these definitions were added or revised in 1996 to implement the CDRI Act. With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions have become unnecessary and would be removed.

Anticompetitive Effect

The current rule defines ''anticompetitive effect'' as a ''monopoly or substantial lessening of competition.'' Under the new statutory scheme, the substance of this definition is the sole criterion for gauging whether to grant an exemption under NCUA's general exemptive authority. Because the proposed regulations would employ this phrase in only one provision, a separate definition is unnecessary.

Critical

The current regulations use the term ''critical'' in connection with the Regulatory Standards exemption created by the CDRI Act. Since the EGRPR Act eliminates the Regulatory Standards exemption, a regulatory definition of ''critical'' is unnecessary.

B. Major Assets Prohibition

Prior to the EGRPR Act, a management official of a depository organization (or its affiliates) having total assets exceeding $1 billion could not serve as a management official of any depository organization with total assets exceeding $500 million (or its affiliates) regardless of location. The EGRPR Act revised the asset thresholds for the major assets prohibition from $1 billion and $500 million to $2.5 billion and $1.5 billion, respectively. The legislation also authorized the NCUA to adjust the threshold from time to time to reflect inflation or market changes.

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[1] The OCC, the Board, the FDIC, and the OTS, (collectively, the Agencies) have recently proposed rules similar to NCUA to implement the EGRPR Act. 63 FR 43052 (August 11, 1998).

[2] The Agencies, and NCUAA, define ''total assets'' of diversified savings and loan holding companies and bank holding companies exempt from § 4 of the Bank Holding Company Act to include only the assets of their depository institution affiliates. *See* 12 CFR 26.2(r), 212.2(q), 348.2(q), 711.2(r), and 563f.2(r).

[3] NCUA adopted final regulations implementing the management interlocks provision of CDRI Act, effective October 1, 1996. *See* 61 FR 50702 (September 27, 1996). The Agencies also adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. *See* 61 FR 40293 (August 2, 1996).

The proposal would amend the regulations to reflect the new threshold amounts and add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In years when changes in the Consumer Price Index would change the thresholds by more than $100 million, NCUA will announce the change by notice published in the **Federal Register** in December. NCUA also invites comment on the types of market changes that may warrant subsequent adjustments to the major assets prohibition.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management Consignment exemptions, which were predicated on § 3207 of the CDRI Act. The EGRPR Act removed the exemptions from the Interlocks Act and substituted a general authority for NCUA to create exemptions by regulation. Accordingly, these regulatory exemptions would be removed by the proposed rule.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes NCUA to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in ''a monopoly or substantial lessening of competition.'' To implement this authority, NCUA is proposing to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition and would not otherwise threaten safety and soundness. The process for obtaining such exemptions will be set out in an NCUA directive to credit unions.

Since 1979, when regulations implementing the Interlocks Act were first promulgated, NCUA has recognized that interlocks involving certain classes of depository organizations present a reduced risk to competition, and that, by enlarging the pool of management available to such organizations, competition could be enhanced. Thus, in the initial interlocks rules published in 1979, NCUA reserved the authority to permit interlocks to strengthen newly-chartered organizations, troubled organizations, organizations in low- or moderate-income areas and organizations controlled or managed by minorities or women. The authority to permit interlocks in such circumstances was deemed ''necessary for the promotion of competition over the long term.'' *See* 44 FR 42161, 42165 (July 19, 1979). Prior to the CDRI Act, these exemptions were granted to meet the need for qualified management. The Management Consignment exemption under the CDRI Act was generally available to the same four classes of organizations, but on a more limited basis.

With the EGRPR Act's restoration of the broad exemptive authority under the Interlocks Act, NCUA again has authority to grant exemptions that will not adversely affect competition. NCUA believes that interlocks involving the four classes of organizations previously identified may provide management expertise needed to enhance the ability of the organizations to compete. Accordingly, NCUA proposes to establish a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) the depository organization is located in, and primarily serves, low- or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution is newly-chartered; or (4) the depository institution, or in the case of a depository organization, a depository institution under its control, is deemed to be in ''troubled condition'' under regulations implementing § 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1831i).

A claim that factors exist giving rise to a presumption does not preclude NCUA from denying a request for an exemption if NCUA finds, based on available materials, that the presumption is rebutted. That is, an exemption request may be denied if NCUA determines that the interlock would result in a monopoly or substantial lessening of competition. The presumptions are designed to provide greater flexibility to classes of organizations that may have greater need for seasoned management, but the presumptions are rebuttable because NCUA recognizes that such needs can only be met in a manner that is consistent with the statute.

The definitions of ''area median income'' and ''low- and moderate-income areas'' added to the regulations in 1996 to implement the CDRI Act amendments are being retained to provide guidance as to when an organization would qualify for one of the presumptions. Interlocks that are based on the presence of a rebuttable presumption would be allowed to continue for three years, unless otherwise provided in the approval order. Nothing in the proposed rule would prevent an organization from applying for an extension of an interlock exemption granted under a presumption if the factors continued to apply. The organizations would also be free to utilize any other exemption that may be available.

NCUA proposes that any other interlock approved under this section be allowed to continue unless it becomes anticompetitive, unsafe or unsound, or is subject to a condition requiring termination at a specific time.

E. Small Market Share Exemption

In 1994, the OCC, FDIC, and FRB published notices of proposed rulemaking seeking comment on a proposed market share exemption. The proposed exemption would have been available for interlocks involving institutions that, on a combined basis, would control less than 20% of the deposits in a community or relevant MSA. These agencies published small market share exemption proposals pursuant to the broad exemptive authority vested in the agencies prior to the CDRI Act. Because the CDRI Act restricted the agencies' broad rulemaking authority, the OCC, FDIC, and FRB withdrew their proposals.[4] The broad exemptive authority under the EGRPR Act again authorizes the small market share exemption. Accordingly, NCUA joins the Agencies in renewing the proposal for the small market share exemption.

The Interlocks Act, by discouraging common management among financial institutions, seeks to prevent unaffiliated institutions from having an adverse impact on competition in the products and services they offer. Where depository institutions dominate a large portion of the market, these risks are significant. When a particular market is served by many institutions, however, the risks diminish that depository institutions with interlocking relationships can adversely affect the available products and services available in their markets.

NCUA believes that the combination of the shares and deposits of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related

[4] *See* OCC, 59 FR 29740 (June 9, 1994), FDIC, 59 FR 18764 (April 20, 1994), and FRB, 59 FR 7909 (February 17, 1994) for proposals prior to CDRI Act. Following enactment of the CDRI Act these proposals were withdrawn; 60 FR 67424 (December 29, 1995) for withdrawal by OCC and FRB; and 60 FR 7139 (February 7, 1995) for withdrawal by the FDIC.

services in their market. Accordingly, NCUA proposes to exempt interlocking service involving two unaffiliated depository organizations that together control no more than 20% of the shares and deposits in any RMSA or community, as appropriate. Organizations claiming the exemption would be required to determine the market share in each RMSA and community in which both depository organizations (or affiliates) are located.

Determination of the relevant market in which to apply the 20% market share standards would be made in accordance with the rules for determining the relevant market under other provisions of NCUA's interlocks regulations. The rules are structured to apply the community prohibition to interlocks between organizations operating within a community and to apply the RMSA prohibition to interlocks between organizations operating within a RMSA. The small market share exemption would not be available for interlocks subject to the major assets prohibition.

The exemptions would continue to apply as long as the organizations meet the applicable conditions. Any event that causes the level of deposits controlled to exceed 20% of deposits in any RMSA or community, such as expansion or a merger, would be considered to be a change in circumstances. Accordingly, the depository organizations would have 15 months, under NCUA's regulation, to address the prohibited interlock by termination or otherwise. The Agency with jurisdiction over the organization may establish a shorter period. Conforming changes relating to termination have been made to NCUA's change of circumstances provisions.

NCUA believes that the small market share exemption may be considered pro-competitive. The exemption is intended to enlarge the pool of management talent upon which depository institutions may draw, resulting in more competitive, better-managed institutions without causing significant anticompetitive effects.

No prior NCUA approval would be required in order to claim the proposed small market share exemption. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation. To determine their eligibility for the exemptions, depository organizations would need to obtain appropriate share and deposit data from NCUA and appropriate deposit data from the FDIC. This information is available upon request to the agencies or on the Internet at http://www.ncua.gov or http://www.fdic.gov.

In order to understand the following discussion, it is important to understand that credit unions offer both share accounts and deposit accounts. Federal credit unions may only establish and maintain share accounts for members, except for public unit accounts and certain nonmember deposits at low-income designated credit unions. Some state-chartered credit unions may establish and maintain both share accounts and deposit accounts. Differences between share and deposit accounts are discussed in NCUA's Truth in Savings rules, 12 CFR part 707, app. C, comments 707.2(i)1–5 and 707.2(p)1–3. These differences are important in obtaining pertinent information to document the small market share exemption.

As NCUA does not report total credit union shares or deposits held in federally insured credit unions by RMSA or community, affected depository institutions must create their own custom reports from information on the NCUA Website. Credit union share and deposit information is available under the heading ''Credit Union Data'' on NCUA's first Website page. Entry into the ''Credit Union Data'' icon will lead the user into the ''Custom Reports'' icon. Entry into the ''Custom Reports'' icon will allow the user to collect total share information by city or state by adding the ''total shares-total'' and ''total shares and deposits-total'' of all credit unions listed at that locale. ''Total shares-total'' will capture the share accounts of federal credit unions and federally insured, state-chartered credit unions only accepting share accounts. ''Total shares and deposits-total'' will capture the share and deposit accounts of federally insured, state-chartered credit unions accepting both share accounts and deposit accounts. Since NCUA does not provide share and deposit totals by community, RMSA, or branch, each credit union will need to provide a reasonable, good faith estimate as to total credit union shares and deposits in a community, RMSA, or branch. The credit union totals will need to be added to information about bank and thrift deposits obtained from the FDIC, and the percentages calculated and maintained in the credit union's records to act as proof documenting the use of the small market share exemption.

The most recently available share and deposit data will be used to determine whether organizations are entitled to the exemptions. All credit unions file call report information semi-annually. Credit unions over $50 million in assets report and file call report information quarterly. FDIC publishes its deposit total information annually. A credit union seeking the exception is entitled to rely upon the share and deposit data that has been compiled for the previous year, until more recent data has been distributed.

NCUA requests comments on all aspects of the proposed small market share exemption. In particular, NCUA requests comments regarding the following issues:

1. Whether 20 % of the deposits in a community or RMSA is an appropriate limit for the application of the exemptions.

2. Whether deposit data collected by the FDIC in connection with the Report of Condition and Income and NCUA in connection with the Financial and Statistical Report, NCUA 5300, for federal credit unions, and the Call Report, NCUA 5300S, for federally insured, state chartered credit unions should be used to determine eligibility for the exemptions, and whether alternative sources of information concerning deposit share should be acceptable for determining availability of the exemptions.

3. Whether calculation of a depository organization's eligibility for exemption from the community prohibition will create undue burdens, and, if so, how the burdens could be reduced (for example, by basing the exemption on the total asset size of the institutions involved).

4. Whether there is a significant risk that depository organizations would create ''hub and spoke'' interlocks to evade the Interlocks Act, whereby several directors of one depository organization serve as directors of different unaffiliated depository organizations.

Paperwork Reduction Act

NCUA invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of NCUA's functions, including whether the information has practical utility;

(2) The accuracy of NCUA'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;

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

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Alex Hunt, Desk Officer for NCUA. Comments must also be sent to NCUA, 1775 Duke Street, Alexandria, VA 22314–3428; Attention: James L. Baylen, Paperwork Reduction Act Coordinator, Telephone No. (703) 518–6410; Fax No. (703) 518–6433; E–Mail Address: OAMAIL@NCUA.GOV. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at NCUA's Central Office, 6th Floor, Law Library, 1775 Duke Street, Alexandria, VA between the hours of 9 a.m. and 1 p.m., Monday through Friday of each week except federal holidays, and by appointment through the Law Librarian at (703) 518–6540.

The collection of information requirements in this proposed rule are found in 12 CFR 711.4(h)(1)(i), 711.5(a)(1), 711.5(a)(2), 711.5(b), 711.6(a), and 711.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by federal credit unions and federally insured, state-chartered credit unions. The likely respondents are federal credit unions and federally insured, state-chartered credit unions.

In the past several years, NCUA has received approximately one management interlock application each year. The following estimates are provided:

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 1.

Start-up costs to respondents: None.

NCUA may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for the applications.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. NCUA expects that this proposal will not: (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. These conclusions are based on the fact that the proposed regulations relax the criteria for obtaining an exemption from the interlocks prohibitions, and specifically address the needs of small entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The NCUA Board has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed rule would, as does the current rule, apply to all federally insured credit unions, including federally insured state-chartered credit unions. However, since the proposed rule reduces regulatory burdens, NCUA has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order. NCUA welcomes comment on means and methods to coordinate with the state credit union supervisors regarding achievement of shared goals involving viability, flexibility, parity, conformity, and safety and soundness regarding management interlocks.

List of Subjects in 12 CFR Part 711

Antitrust, Credit unions, Holding companies, Management official interlocks.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend part 711 of chapter VII of title 12 of the Code of Federal Regulations to read as follows:

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 711 continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

§ 711.2 [Amended]

1. Section 711.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

2. Section 711.3 is amended by revising paragraph (c) to read as follows:

§ 711.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The NCUA will announce the revised thresholds by publishing a notice in the **Federal Register**.

3. Section 711.5 is revised to read as follows:

§ 711.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is permissible, provided:

(1) The interlock is not prohibited by § 711.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each RMSA or community in which the depository organizations (or their depository institution affiliates) are located. The amount of shares or deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC or in information provided by NCUA for the RMSA or community. This information is available on the Internet at http://www.ncua.gov or http://www.fdic.gov.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

4. Section 711.6 is revised to read as follows:

§ 711.6 General exemption.

(a) *Exemption.* NCUA may, by agency order issued following receipt of an application, exempt an interlock from

the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.

(b) *Presumptions.* In reviewing applications for an exemption under this section, NCUA will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves, low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 701.14(b)(3) of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the NCUA approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the NCUA grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided in the approval.

5. Section 711.7 is amended by revising paragraph (a) to read as follows:

§ 711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

[FR Doc. 98–28879 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 714

Leasing

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The NCUA Board is proposing to update and redesignate its long-standing policy statement on leasing, Interpretive Ruling and Policy Statement (IRPS) 83–3, as an NCUA regulation. IRPS 83–3 authorizes federal credit unions to engage in either direct or indirect leasing and either open-end or closed-end leasing of personal property to their members if such lease financing arrangements are the functional equivalent of secured loans. In addition, the proposed regulation formalizes NCUA's position, stated in legal opinion letters, that a federal credit union does not have to own the lease property in indirect leasing if certain requirements are satisfied.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Nicole Sippial Williams, Staff Attorney, Division of Operations, Office of the General Counsel, at the above address or by telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

As part of its regulatory review program, NCUA reviewed its Interpretive Rulings and Policy Statements (IRPS) to determine their current effectiveness. As a result of this review, the NCUA Board determined that a number of the IRPS should be withdrawn because they were outdated or unnecessary, and that certain IRPS should be redesignated as NCUA regulations to clarify and more effectively communicate NCUA's position on issues affecting federal credit unions (FCUs). 62 FR 11773 (March 13, 1997). Thereafter, twenty-eight (28) IRPS were withdrawn. 62 FR 50245 (September 25, 1997). This was NCUA's first step in its ongoing project to update and streamline its IRPS.

At this time, NCUA is in the second phase of the IRPS project, that is, the redesignation of certain IRPS as NCUA regulations. Among those IRPS that the NCUA Board determined would be better suited as a regulation is IRPS 83–3, Federal Credit Union Leasing of Personal Property to Members. 62 FR 11773 (March 13, 1997). The NCUA Board's goal in redesignating this IRPS is to increase regulatory effectiveness by establishing a rule that sets forth NCUA's current position on leasing and by making it easier for an FCU to locate the rule and its requirements.

In 1983, the NCUA Board issued IRPS 83–3 (48 FR 52568, Nov. 21, 1983) stating that FCUs can lease personal property to their members if the leasing of the personal property is the functional equivalent of secured lending. The NCUA Board did not want FCUs to assume burdens or subject themselves to risks greater than those ordinarily incident to secured lending. The NCUA Board determined that for leasing to be the functional equivalent of lending, a lease had to be a net, full payout lease with a residual value not exceeding 25% unless guaranteed. In addition, an FCU had to retain salvage powers over the leased property and maintain a contingent liability insurance policy with an endorsement for leasing.

The NCUA Board further stated that FCUs could engage in either direct or indirect leasing and either open-end or closed-end leasing. That is, an FCU could either purchase property from a vendor for the purpose of leasing such property to a member or purchase the lease and the leased property after the lease has been executed between the vendor and the member. Further, an FCU could either require a member to assume the risk and responsibility for any difference in the relied upon residual value and the actual value of the property at lease end or assume such risk itself.

After IRPS 83–3 was issued, NCUA received a number of inquires regarding whether an FCU must own the leased property. NCUA responded through legal opinion letters that, in states requiring an entity engaged in leasing to be a licensed dealer, which involved posting a bond and complying with other state regulatory requirements, an FCU did not have to own the leased property. However, the FCU had to be named as the sole lienholder on the lease property and granted an unconditional, irrevocable power of attorney.

Thereafter, the leasing industry argued that irrespective of state limitations, an FCU should be able to

take a lien on the leased property instead of having to own the property. The industry stated that an FCU would be insulated from tort liability by not being the owner of the leased property and an FCU's member would have lower lease payments if the vendor was able to take advantage of certain tax benefits available only if the vendor retained ownership of the property. NCUA concluded in legal opinion letters, that although the direct and indirect lease financing arrangements described in the supplementary section of IRPS 83–3 would result in an FCU owning the leased property, the IRPS itself did not require such ownership. Thus, NCUA took the position that the purchase or assignment of a lease and the receipt of a lien on the leased property was a form of permissible indirect lease financing if an FCU was named as the sole lienholder on the lease property, was assigned all of the vendor's rights under the lease, and obtained an unconditional, irrevocable power of attorney.

The recent bankruptcy of a leasing company has brought to NCUA's attention the potential problems regarding the ownership of the leased property and the lease in indirect lease financing. In the bankruptcy case, the trustee has argued that the leasing company, not the FCU, owned the leases and the leased property. NCUA still is of the position that an FCU does not have to own the leased property since leasing is to be the functional equivalent of secured lending, and in secured lending, the member owns the property which is the security for the loan, not the FCU.

However, NCUA is concerned that an assignment of the rights under a lease is not the same as a full assignment of the lease, that is, ownership of the lease. Unless an FCU becomes owner of a lease, there is a legal question as to how the lease will be treated in the event of the bankruptcy of a vendor. Failure to receive a full assignment could result in a substantial loss to an FCU in the event of the bankruptcy of a vendor.

B. The Proposed Regulation

In drafting the proposed regulation, NCUA has chosen to use a plain English, question and answer format. Plain English is being promoted within the federal government as a means to increase regulatory comprehension and improve compliance among users of regulations by decreasing confusion and misunderstanding created by unclear standard regulatory language.

The proposed regulation adopts the leasing policy and requirements set forth in IRPS 83–3 although the language and the format of the proposed regulation are different. In addition, the proposed rule specifically provides that an FCU does not have to own the leased property if an FCU obtains a full assignment of a lease, in other words becomes the owner of the lease, is named as sole lienholder on the property, and obtains an unconditional, irrevocable power of attorney.

C. Request for Comments

At this time, the NCUA Board invites the public to review the proposed regulation and requests comment on the use of the plain English format and the issues presented below. The questions below are intended to elicit comments on issues of concern; however, the list is not intended to be exclusive. The NCUA Board welcomes any and all relevant comments on leasing. Please remember that a comment that includes the reasoning or basis for a proposition likely will be more persuasive than a comment without supporting information.

Questions

1. Should an FCU be required to own the leased property?
2. If NCUA does not require an FCU to own the leased property, but permits it to be a first lienholder, should an FCU be required to obtain a power of attorney from the leasing company?
3. Should an FCU be required to receive a full assignment of the lease in an indirect lease financing arrangement?
4. Should NCUA raise the 25% residual value limit?
5. Should NCUA establish a minimum rating for insurance companies used in leasing arrangements? If so, what rating should be used?

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed regulation will not have a significant impact on a substantial number of small credit unions. Most small credit unions do not offer lease financing arrangements to its members. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the requirement in § 714.5 that an FCU must obtain or have on file statistics documenting that a guarantor has the resources to meet a residual value guarantee constitutes a collection of information under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed regulation to the Office of Management and Budget (OMB) for its review.

The proposed regulation requires an FCU to obtain a guarantee if it uses a residual value estimate that is greater than 25% of the value of the leased property. Residual value is the projected future value of leased property at lease end. A significant disparity in a residual value estimate and the actual value of a leased property at lease end can result in a loss to an FCU. The greater the residual value estimate used, the greater the potential for loss is for an FCU. For this reason, it is important that a residual value estimate greater than 25% is guaranteed and that the guarantor is financially able to meet the guarantee. The NCUA Board believes that the best way for an FCU to evaluate the creditworthiness and ability of a guarantor to meet the guarantee is to obtain and maintain documentation evidencing such financial ability.

The NCUA Board estimates that it will take an average of one to two hours to acquire, maintain, and evaluate such documentation. The NCUA Board estimates that approximately 750 FCUs are engaged in leasing, so that the total annual collection burden is estimated to be no more than 1500 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. The NCUA Board invites comment on: (1) whether the collection of information is necessary; (2) the accuracy of NCUA's estimate of the burden of collecting the information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The Proposed regulation only applies to federal credit unions. The NCUA Board has determined that the proposed regulation does not constitute a significant regulatory action for the purposes of the Executive Order.

List of Subjects in 12 CFR Part 714

Credit unions, Leasing.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA proposes to add Part 714 to read as follows:

PART 714—-LEASING

Sec.

714.1 What does this part cover?
714.2 What are the permissible lease financing arrangements?
714.3 Must you own the leased property arrangement?
714.4 What are the lease requirements?
714.5 What is required if a residual value greater than 25% is used?
714.6 Who is responsible for the difference between the residual value estimate and the actual value of the leased property at lease end?
714.7 Are you required to retain salvage powers over the leased property?
714.8 What are the insurance requirements applicable to leasing?
714.9 What rate of interest may be charged under a lease?
714.10 When engaged in indirect leasing, must you comply with the purchase of eligible obligation rules set forth in § 701.23 of this chapter?
714.11 What other laws must you comply with when engaged in leasing?

Authority: 12 U.S.C. 1756, 1757, 1766, 1785, 1789.

§ 714.1 What does this part cover?

This part covers the standards and requirements that a federal credit union (''you'') must follow when engaged in the lease financing of personal property.

§ 714.2 What are the permissible lease financing arrangements?

(a) *Direct leasing.* In direct leasing, you purchase personal property from a vendor, becoming the owner of the property at the request of your member, and then lease the property to that member.

(b) *Indirect leasing.* In indirect leasing, you purchase a lease and the leased property for the purpose of leasing such property to your member after the lease has been executed between a vendor and your member.

§ 714.3 Must you own the leased property?

You do not have to own the leased property if:

(a) You obtain a full assignment of the lease. A full assignment is the assignment of the rights, interests, obligations, and title in a lease to you, that is, you become the owner of the lease;

(b) You are named as the sole lienholder of the leased property; and

(c) You receive an unconditional, irrevocable power of attorney to transfer title in the property to yourself.

§ 714.4 What are the lease requirements?

(a) Your lease must be a net lease. In a net lease, your member assumes all the burdens of ownership including maintenance and repair, licensing and registration, and insurance;

(b) Your lease must be a full payout lease. In a full payout lease, you must recoup your entire investment in the leased property, amount financed, plus the cost of financing over the term of the lease; and (c) Your residual value estimate may not exceed 25% of the original cost of the leased property unless guaranteed. Residual value is the projected future value of the leased property at lease end. The residual value estimate must be reasonable in light of the nature of the leased property and all circumstances relevant to the leasing arrangement.

§ 714.5 What is required if a residual value greater than 25% is used?

You may use a residual greater than 25% of the original cost of the leased property if a financially capable party guarantees the full value of the property. The guarantor may be the manufacturer or an insurance company that has a nationally recognized industry rating of at least a B+. You must obtain or have on file statistics documenting that the guarantor has the resources to meet the guarantee.

§ 714.6 Who is responsible for the difference between the residual value estimate and the actual value of the leased property at lease end?

Either you or your member may be responsible for the difference in the residual value and the actual value. Thus, your lease may be either open-end or closed-end. In an open-end lease, your member assumes the risk and responsibility for any difference in the relied upon residual value and the actual value of the property at lease end. In a closed-end lease, you assume such risk.

§ 714.7 Are you required to retain salvage powers over the leased property?

You must retain salvage powers over the leased property. Salvage powers protect you from a loss and provide you with the power to take action if there is an unanticipated change in conditions that threatens your financial position by significantly increasing your exposure to risk. Salvage powers allow you:

(a) As the owner and lessor, to take reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease; or

(b) As the assignee of a vendor's interest in a lease, to become the owner and lessor of the leased property pursuant to your contractual rights, or take any reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease.

§ 714.8 What are the insurance requirements applicable to leasing?

(a) You must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if you do not own the leased property. Contingent liability insurance protects you should you be sued as the owner of the leased property. You must use an insurance company with a nationally recognized industry rating of at least a B+.

(b) Your member must carry the normal liability or collateral protection insurance on the leased property. The insurance policy must acknowledge the property as leased and list you as the financier of the leased property.

§ 714.9 What rate of interest may be charged under a lease?

You may charge a rate of interest that is higher than the usury ceiling limit for credit unions set forth in § 701.21(c)(7)(ii)(B) of this chapter when engaged in leasing activities.

§ 714.10 When engaged in indirect leasing, must you comply with the purchase of eligible obligation rules set forth in § 701.23 of this chapter?

You may participate in an indirect leasing arrangement under your authority to make loans to members if:

(a) You review the lease and other documents to determine that the arrangement complies with your leasing polices; and (b) You receive a full assignment of the lease very soon after it is signed by your member and a vendor.

§ 714.11 What other laws must you comply with when engaged in leasing?

You are subject to the lending rules set forth in § 701.21 of this chapter, except as provided in § 714.9 of this part, and the Consumer Leasing Act, 15 U.S.C. § 1601, *et seq.*, and Regulation M, 12 CFR Part 213 implementing such Act.

[FR Doc. 98–28876 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NN–57–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adopting of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, this proposal also would require replacement of the original brake mounting gasket with a more durable aluminum-nickle-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, the proposal would require modification of the mounting flange holes of the torque tube. This proposal is prompted by reports of cracking in the axle flange and by reports of deterioration of the brake mounting gasket. The actions specified by the proposed AD are intended to prevent fracture of the MLG axle and separation of the wheel from the MLG, and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rule Docket No. 98–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–57–AD.'' The postcard will date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, since the introduction of the Boeing Model 737 series airplane into service, numerous airplanes have lost a main landing gear (MLG) wheel due to fracturing of the axle. Although the total number of such wheel losses is small, the rate at which fractures occur has increased in the last several years. The axle fractures (and resultant wheel losses) are attributed to a variety of conditions, including the deterioration of the original fiberglass brake mounting gasket and fretting damage of the stud holes in the adjacent axle flange. (The gasket is installed between the brake assembly and the MLG axle flange; the flange itself is an integral part of the MLG axle.)

Investigation has revealed that the deterioration of the original fiberglass brake mounting gasket is caused by heat and vibration generated by the MLG brake assemblies. Such deterioration of the gasket leads to a loss of clamp-up forces between the brake assembly and the MLG axle flange. This is turn leads to loosening of the brake assembly and fretting damage of the axle flange. It is typical for such fretting damage of the axle flange to lead to the initiation of a crack in a stud hole of the axle flange; such cracking eventually grows and spirals outward from the flange until a complete fracture of the MLG axle occurs. Deterioration of the brake mounting gasket, if not corrected, could lead to fracture of the MLG axle and separation of the wheel from the MLG, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–32–1253, dated November 7, 1991, which describes procedures for the replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket. The service bulletin also specifies a configuration in the new gasket installation. Specifically, the service bulletin instructs operators to use a 10-bolt, 2-stud mounting configuration for attaching the new gasket to the adjacent MLG axle flange. This new mounting configuration allows the clamp-up forces between the brake assembly and the MLG axle flange to be maintained at levels enough to prevent future fretting of the axle flange.

In addition, AlliedSignals has issued Service Bulletin 2601042–32–003, dated March 15, 1997, which describes procedures for modification of the mounting flange holes of the torque tube. The modification includes increasing the counterbore depth of the mounting flange holes of the torque tube, and installing a chamfer to properly interface with the attachment studs on the MLG axle flange. This service bulletin was issued when it became evident that incorporation of Boeing Service Bulletin 737–32–1253 could cause an interference problem on certain AlliedSignal brake assemblies.

In addition, Boeing has issued All Operators Telex (AOT) M–7272–96–1442, dated March 29, 1996, which provides background information on the fractures of the MLG axle that have occurred in the fleet. The section of this AOT titled ''Recommended Operator

Action'' specifies that certain actions be accomplished in conjunction with the modification specified in Boeing Service Bulletin 737–32–1253. Specifically, the ''Recommends Operator Action'' section lists the corrective actions to be taken if corrosion or fretting damage is found on the axle flange. The corrective actions include removing any corrosion found on the axle flange, blending out any fretting or cracking damage, and performing either a magnetic inspection or a high frequency eddy current inspection to ensure that the repaired part is free of cracks.

Accomplishment of the actions specified in the service bulletins and AOT is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the MLG axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, this proposal also would require replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket. For airplanes equipped with the new gaskets, but not with the new shear studs, the proposal would require installing new shear studs concurrently with the other actions proposed by this AD. For certain airplanes, the proposal also would require modification of the mounting flange holes of the torque tube. The actions would be required to be accomplished in accordance with the Boeing and AlliedSignal service bulletins, and the Boeing AOT described previously, except as discussed below.

Differences Between the Proposed Rule and the Service Information

Operators should note that although the AOT recommends that operators accomplish a magnetic particle or high frequency eddy current inspection for cracking only after the MLG axle flange has been repaired (following the discovery of corrosion or fretting), this proposed AD would require the accomplishment of one of these inspections even if the axle flange shows no signs of corrosion or fretting.

Additionally, the AOT specifies that operators are to contact the manufacturer for certain follow-on repair instructions. However, this proposed AD would require that such repair be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 893 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $214,320 or $240 per airplane.

It would take approximately 32 work hours per airplane at an average labor rate of $60 per work hour should an operator be required to accomplish the proposed brake modification. Required parts would cost approximately $2,052 per airplane. Based on these figures, the cost of the proposed brake modification on U.S. operators is estimated to be $2,972 per airplane.

Additionally, the FAA estimates that it would take approximately 5 work hours per airplane to accomplish the proposed torque tube modification and that the average labor rate is $60 per work hour. The FAA estimates that this action would be required to be accomplished on approximately 400 U.S.-registered airplanes. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $120,000, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–57–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; line positions 1 through 2135 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the main landing gear (MLG) axle and the separation of the wheel from the MLG, and consequent reduced controllability of the airplane, accomplish the following:

(a) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing part numbers (P/N) 10–61063–14, –18, or –21, on which the original gaskets have been replaced with aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991: Within 200 days or 1,500 flight cycles after the effective date of this

AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking, except that a high frequency eddy current inspection may only be accomplished if the axle flange has not been repaired previously and coated with a nickel sulfamate finish. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing All Operators Telex (AOT) M–7272–76–1442, dated Mach 29, 1996. If any cracking is detected, prior to further flight, repair the MLG axle flange in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (a)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the torque tube mounting holes on the mounting flange, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

(4) If shear studs were replaced at the time the new aluminum-nickel-bronze gaskets were installed: Replace the shear studs in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

(b) For Model 737–100 and –200 series airplanes equipped with AlliedSignal (ALS/Bendix) brake assembly installations having Boeing P/N 10–61063–14, –18, or –21, on which the original gaskets have not been replaced with new aluminum-nickel-bronze gaskets in accordance with Boeing Service Bulletin 737–32–1253, dated November 6, 1991: Within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG axle flange in accordance with a method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (b)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the torque tube mounting holes of the mounting flange, in accordance with AlliedSignal Service Bulletin 2601042–32–003, dated March 15, 1997.

(4) Accomplish the modification of the affected brake assemblies in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

(c) For Model 737–100, –200, –300, –400, and –500 series airplanes other than those identified in paragraphs (a) and (b) of this AD: Within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Perform either a one-time magnetic particle inspection or a one-time high frequency eddy current inspection of the MLG axle flange to detect cracking. The magnetic particle inspection or high frequency eddy current inspection is to be accomplished in accordance with procedures specified in paragraph B. of the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996. If any cracking is detected, prior to further flight, repair the MLG axle flange in accordance with a method approved by the Manager, Seattle ACO.

(2) If any corrosion or fretting is found during accomplishment of the inspection required by paragraph (c)(1) of this AD: Prior to further flight, accomplish the repair procedures specified in the ''Recommended Operator Action'' section of Boeing AOT M–7272–96–1442, dated March 29, 1996.

(3) Accomplish the modification of the affected brake assemblies in accordance with Boeing Service Bulletin 737–32–1253, dated November 7, 1991.

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

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

(e) Special flight permits may be issued in accordance with sessions 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21. 199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 21, 1998.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28969 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–07–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Avionics, Inc. Models GNS–X_{LS} and GNS–X_L Flight Management Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 97–05–03, which currently requires inserting a limitation into the Operations Limitation Section of the Airplane Flight Manual (AFM) or Flight Manual Supplement for all owners/operators of aircraft equipped with Allied Signal Avionics Inc. (AlliedSignal) Models GNS–X_{LS} or GNS–X_L global positioning systems (GPS) flight management system. The limitation specifies prohibiting the use of these AlliedSignal GPS units on previously published non-precision approaches. Since issuance of AD 97–05–03, AlliedSignal has issued service information that specifies procedures for accomplishing hardware and software modifications to the affected flight management systems. The Federal Aviation Administration (FAA) has determined that accomplishment of the actions of the service bulletins should be considered as an alternative method of compliance to the actions of AD 97–05–03. The proposed AD would retain the actions of AD 97–05–03, and would incorporate the service bulletins into the proposed AD, as an alternative method of compliance to the existing AD. The actions specified by the proposed AD are intended to continue to prevent deviation from an intended flight path during a non-precision approach to an airport caused by inaccurate information from the GPS flight management system.

DATES: Comments must be received on or before December 22, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from AlliedSignal Aerospace, Commercial Avionics Systems, 400 N. Rogers Road, Olathe, Kansas 66062. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Flores, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4133; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–07–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–07–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 97–05–03, Amendment 39–9947 (62 FR 8617, February 26, 1997), currently requires inserting the following limitation into the Operations Limitations Section of the AFM or Flight Manual Supplement for all owners/operators of aircraft equipped with an AlliedSignal Models GNS–X_L or GNS–X_L GPS flight management system:

''Operating Limitations

The GNS–X_L (or GNS–X_{LS}) is not approved for non-precision approaches.

NOTE

The GNS–X_L (or GNS–X_{LS}) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.''

The actions specified in AD 97–05–03 are intended to prevent deviation from an intended flight path during a non-precision approach to an airport caused by inaccurate information from a GPS flight management system.

AD 97–05–03 resulted from reports of aircraft flight course deviations because of erroneous information provided by the GPS flight management system.

Actions Since Issuance of Previous Rule and the FAA's Determination

Since AD 97–05–03 became effective, Allied Signal has issued GlobalWulfsberg Software Bulletin No: GNS–X_L–SW1, dated February 1997, and BENDIX/KING Software Bulletin No: GNS–X_{LS}–SW2, dated February 1997. These service bulletins specify procedures for accomplishing hardware and software modifications to the affected flight management systems.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that:

—the accomplishment of the software and hardware modifications specified in the above-referenced service bulletins should be considered as an alternative method of compliance to the actions of AD 97–05–03; and

—AD action should be taken in order to (1) incorporate the service information into the existing AD; and (2) continue to prevent deviation from an intended flight path during a non-precision approach to an airport caused by inaccurate information from the GPS flight management system.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in aircraft equipped with an AlliedSignal Models GNS–X_{LS} or GNS–X_L GPS flight management system, the FAA is proposing AD action to revise AD 97–05–03. The proposed AD would retain the AFM requirements of AD 97–05–03, and would incorporate the hardware and software modifications (specified in the above-referenced service bulletins) into the AD, as an alternative method of compliance to the AFM requirements.

Compliance Time of The Proposed AD

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft where the affected flight management systems are installed. The need for the AFM requirement or hardware and software modifications has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD (as was AD 97–05–03) is presented in calendar time instead of hours TIS.

Cost Impact

The FAA estimates that 110 of the affected flight management systems are installed on aircraft of U.S. registry. The proposed AD would require the same actions as AD 97–05–03, except it allows for accomplishing hardware and software modifications to the affected flight management systems, as an alternative method of compliance.

It would take approximately 1 workhour per aircraft with the affected flight management system installed to accomplish the proposed hardware and software modifications. No parts are required to incorporate the proposed modifications. Based on these figures, the total cost impact of the proposed AD on the U.S. operators of the affected aircraft who choose to incorporate the software and hardware modifications (instead of the AFM limitation) is estimated to be $6,600, or $60 per airplane.

For U.S. operators who choose to incorporate the AFM limitations, an owner/operator of the affected airplanes holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) can accomplish this action provided an entry is made in the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Therefore, the only cost impact of incorporating the proposed AFM limitation is the approximately 10 minutes it would take each owner/operator of the affected aircraft to accomplish the action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 97–05–03, Amendment 39–9947 (62 FR 8617, February 26, 1997), and adding a new AD to read as follows:

Alliedsignal Avionics Inc.: Docket No. 97–CE–07–AD; Revises AD 97–05–03, Amendment 39–9947.

Applicability: Models GNS–X_{LS} and GNS–X_L global positioning systems, part numbers (P/N) 17960–0102–XXXX and P/N 18355–0101–XXXX, respectively, installed on, but not limited to the following aircraft, certificated in any category:

Manufacturer	Models
British Aerospace, Ltd (BAe).	146–100A and 146–200A.
Cessna Aircraft Corporation.	525, 550, and 560.
Dausault Aviation	Mystere-Falcon 20 and 50.
Avions Marcel Dassault.	Falcon 10.
Gulfstream Aerospace.	G–1159 (G–II) and G–1159A (G–III).
Raytheon Corporate Jets.	Hawker 800.
Israel Aircraft Industries, Ltd.	1124.
Sabreliner Corporation.	NA–65.
Learjet Inc	35.
Jetstream Aircraft Ltd	4101.

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

Compliance: Required within 5 days after March 18, 1997 (the effective date of AD 97–05–03), unless already accomplished (compliance with AD 97–05–03).

To prevent deviation from an intended flight path during a non-precision approach to an airport caused by inaccurate information from the GPS flight management system, accomplish the following:

(a) Insert the following limitation into the Operations Limitations Section of the Airplane Flight Manual (AFM) or Flight Manual Supplement:

''Operating Limitations

The GNS–X_L (or GNS–X_{LS}) is not approved for non-precision approaches.

NOTE

The GNS–X_L (or GNS–X_{LS}) may generate misleading information during non-precision GPS or Overlay approaches due to software limitations.''

(b) Inserting a copy of this AD into the Limitations section as described in paragraph (a) of this AD is considered compliance with the requirements of paragraph (a) of this AD.

(c) Incorporating the AFM revisions, as required by paragraph (a) or (b) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) As an alternative method of compliance to the actions required by paragraph (a) or (b) of this AD, accomplish hardware and software modifications in accordance with both GlobalWulfsberg Software Bulletin No: GNS–X_L–SW1, dated February 1997, and BENDIX/KING Software Bulletin No: GNS–X_{LS}–SW2, dated February 1997, as applicable.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

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

(f) Service information that applies to this AD may be obtained from AlliedSignal Aerospace, Commercial Avionics Systems, 400 N. Rogers Road, Olathe, Kansas 66062. This information may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) This amendment revises AD 97–05–03, Amendment 39–9947.

Issued in Kansas City, Missouri, on October 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–28968 Filed 10–28–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 98N–0877]

Medical Devices; Performance Standards for Dental and Mammographic X–Ray Devices; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt panoramic dental x-ray units from the requirement that they be manufactured with exposure timers which automatically reset to zero upon premature termination of an exposure. Removing the automatic timer reset requirement will not compromise the quality of the radiographic image and will protect patients from being subjected to unnecessary radiation due to repeat radiographs. FDA also proposes five changes to align the performance standard with the

equipment requirements issued under the Mammography Quality Standards Act of 1992 (MQSA). First, the agency proposes to remove any reference to the use of equipment not specifically designed for mammography from the performance requirements for mammography equipment. Second, FDA proposes that the mammographic field alignment requirements restrict the irradiation beam to less than 2 percent of the source-image receptor distance (SID) beyond the image receptor edges. Third, it is proposed that the definition of an image receptor support device be amended to specify that it must provide a primary protective barrier for any orientation of the x-ray tube and image receptor support device assembly. Fourth, it is proposed that the useful beam must be confined to the dimensions of the primary barrier provided by the image receptor support device (except on the chest wall side). Fifth, it is proposed that exposures not be permitted without the primary barrier in place.

DATES: Written comments by January 27, 1999.

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

FOR FURTHER INFORMATION CONTACT: Richard V. Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0865.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 (Pub. L. 101–629), enacted on November 28, 1990, transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) from Title III of the Public Health Service Act (PHS Act) to Chapter V of the Federal Food, Drug, and Cosmetic Act (the act). Under the act (21 U.S.C. 301 *et seq.*), FDA is proposing to amend the performance standard for diagnostic x-ray systems and their major components. Performance Standards for Ionizing Radiation Emitting Products are contained in part 1020 (21 CFR part 1020). This standard was initially published in the **Federal Register** of August 15, 1972 (37 FR 16461). Since that time there have been several amendments, both to stay current with technological developments and to clarify the interpretation of the provisions. Additionally, the President's Radiation Protection Guidance to Federal Agencies for Diagnostic X-Rays, published on February 1, 1978 (43 FR 4377), recommended that the fundamental objective in performing x-ray examinations should be to obtain optimum diagnostic information with minimum patient exposure.

The radiographic equipment standards of § 1020.31 apply to diagnostic x-ray systems, including those used for dental radiography and mammography. The most recent amendments to the performance standard, published in the **Federal Register** of May 3, 1993 (58 FR 26386), and corrected May 28, 1993 (58 FR 31067), and May 19, 1994 (59 FR 26402), did not affect the timer requirements for dental systems or the x-ray beam limitation on mammography systems. Most recently, the passage of the MQSA (Pub. L. 102–539) and issuance of interim and final MQSA regulations have focussed attention on the mammography equipment requirements contained in part 1020. Although the MQSA is directed to facility requirements for maintaining mammography quality, both the interim and the final MQSA regulations contain certain requirements for mammographic x-ray equipment that is also subject to the performance standard for diagnostic x-ray systems (58 FR 67558, 58 FR 67565, and 62 FR 55976).

The safety and performance aspects of panoramic dental systems were discussed with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) in 1996. TEPRSSC is a statutory advisory committee (21 U.S.C. 360kk(f)(1)(A)) that FDA is required to consult prior to proposing any electronic product performance standards under the act. TEPRSSC recommended that the performance standard be amended to exempt panoramic systems from the timer reset requirement. The issues of collimation of the mammography x-ray field and primary barrier transmission were presented and discussed with TEPRSSC at the 1997 meeting. The recommendation was that FDA amend the performance standard for diagnostic x-ray systems to allow the dimensions of the x-ray beam to exceed the image receptor dimensions by up to 2 percent of the SID, and that the beam be fully intercepted by the image receptor support device, except on the chest wall side. TEPRSSC also recommended that the primary barrier transmission requirement be retained, that manufacturers discontinue the practice of designing general purpose x-ray systems so that they may be used to perform mammography, and that manufacturers not promote or encourage their use for mammography. FDA has reviewed the recommendations of TEPRSSC and agrees with their recommendations. Accordingly, FDA is proposing to amend the performance standard as indicated as follows.

Amendments to performance standards for electronic products ordinarily become effective 1 year after the date of publication of the final rule to allow sufficient time for manufacturers to implement changes in design or production practices (21 U.S.C. 360kk(c)). FDA believes it would have good cause for prescribing an earlier effective date for these proposed mammography amendments, as unneeded delay in their implementation could lead to difficulties for mammography facilities because of confusion about the requirements of different government standards when the MQSA final regulations become effective in April 1999. FDA also feels that an unneeded delay in the final dental x-ray amendments could lead to problems for dental facilities. Because this proposed amendment clarifies a provision of the Federal standards, FDA believes that it will prevent misunderstandings by State regulators. FDA welcomes comments on the timeframe for implementation of a final rule.

II. Dental X-Ray Devices

A. Panoramic Dental Radiography

FDA established the requirement that exposure timers be automatically reset upon premature termination of an exposure because the agency believed that the resulting radiograph would not provide adequate diagnostic information because of insufficient exposure of the film. Further, it was felt that the continuation of the exposure was not advisable because any patient movement occurring for any reason would make it impossible to obtain an adequate diagnostic image. The rationale was that discontinuing exposure would ensure that the patient did not receive exposure to x-rays that was unnecessary since it would not produce a clinically useful radiograph. The requirement that the timer automatically be reset results in a repeat exposure from the start in order to achieve adequate radiographic quality.

In 1974, FDA determined through correspondence with a manufacturer of panoramic dental units that the timer requirement of § 1020.31(a)(2)(i) should not apply to the manufacturer's units. The manufacturer's units performed a panoramic sweep in 9 to 12 seconds. However, if the system were stopped, it could resume the panoramic examination starting from where it was

interrupted, and viable image data would still be obtained without the need to restart the panoramic view. This resumption was because of the design of the system and the manner in which the image was acquired. As the tube head of a panoramic system moves, so does the film, resulting in only a small portion of the film being irradiated at a given interval of time. A lead shield protects the unexposed and previously exposed parts of the film. Therefore, stopping and restarting of the exposure did not result in a radiograph which was unusable.

FDA notified the manufacturer that the panoramic dental unit would not be considered noncompliant with the performance standard of § 1020.31(a)(2)(i) and FDA has followed this interpretation for other panoramic dental units that perform in a similar manner since then.

B. Interpretations of the Performance Standard

Although the agency has exercised its discretion in not enforcing the timer requirement against manufacturers of panoramic dental units, FDA believes it is necessary to expressly exempt such units from the timer reset requirement. Section 542 of the act (21 U.S.C. 360ss) provides that any State or local standard applicable to the same aspect of performance as the Federal performance standard must be identical to the Federal standard. State and local officials in jurisdictions that have adopted requirements identical to § 1020.31(a)(2)(i) may enforce that requirement against manufacturers of panoramic dental units. Thus, to ensure consistency among Federal, State, and local requirements, FDA believes a change to the performance standard is necessary.

III. Mammography X-Ray Devices

A. Equipment Requirements and the Mammography Quality Standards Act

The MQSA and FDA's regulations governing mammography establish quality standards for facilities performing mammography to assure safe, reliable, and accurate mammography nationwide. FDA would like to ensure that the standards pertaining to radiation emitting electronic products, including mammography equipment, and those pertaining to the facilities that use such equipment are in accord. Presently, the equipment standard specifies that the x-ray field must be contained within the borders of the image receptor, except on the chest wall side (§ 1020.31(f)(3)). The equipment standard also indicates a limit on the maximum allowable transmission through the image receptor support device. FDA proposes to modify the field alignment requirements to allow the x-ray field to extend beyond any edge of the image receptor in such a manner that this extension does not exceed 2 percent of the SID. The limit on x-ray transmission through the image receptor support would still apply except on the chest wall edge.

The MQSA requires that only equipment specifically designed for mammography can be used by facilities. Systems designed for other types of studies but provided with special attachments for mammography are no longer allowed under MQSA. As a result, it is proposed that § 1020.31(f)(3) be changed to be consistent with the MQSA requirements by deleting the language which previously included general purpose radiographic systems.

B. Field Size Limitations

Section 1020.31(f)(3) pertains to field limitation of mammographic x-ray equipment. It states that:

> [R]adiographic systems designed only for mammography and general purpose radiographic systems, when special attachments for mammography are in service, shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the x-ray field may not extend beyond this edge by more than 2 percent of the SID.

The previous requirement holds the manufacturer or assembler of the equipment (not the facility) responsible for providing means to limit the x-ray field at the image receptor plane so that the x-ray field does not extend beyond any edge of the image receptor except the side adjacent to the chest wall. FDA's standard also defines the image receptor as a fluorescent screen, radiographic film, solid-state detector, or gaseous detector, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations.

The image receptor is the film itself (where film is used). In this case, neither the image receptor assembly nor the cassette holder is considered the image receptor. For fixed aperture devices, in order to assure that the x-ray field does not exceed the edges of the image receptor, the manufacturer must restrict the beam so that unexposed edges will appear on the developed film to account for film size tolerances or shifts inside the cassette. For stepless adjustable beam-limiting devices (BLD), the means provided by the manufacturer to assure compliance with the previous requirement is that the x-ray field must always be slightly smaller than the light field. Thus, when the operator adjusts the light field to the image receptor size, the x-ray field will indeed be contained within the borders of the image receptor (except of course on the side adjacent to the chest wall which is allowed a tolerance of up to 2 percent of the SID). For this type of BLD, the operator may also open the field to any size and is limited only by the maximum opening allowed by the system which should be restricted by the limits established by § 1020.31(m).

One aspect of the MQSA requirements addresses the proper viewing of mammography films. The standard practice is that these be read on view boxes (light boxes) with the ambient room light levels reduced. Unexposed film areas and parts of the light box should be masked to prevent the bright light surrounding the radiograph from interfering with the interpretation under these conditions. It is possible to tailor the masking of these areas for individual cases; however, this becomes a problem when large numbers of films are viewed, as in a breast screening program. The work of the radiologist is expedited if radiographs are produced without transparent margins. Another consideration is that the clinical image review process of accreditation bodies, such as the American College of Radiology, is simplified by having to create only one mask size, rather than having to create individualized masks for each facility. A practice used by some facilities with variable aperture BLD is to increase the x-ray field size to expose the borders of the film and thus reduce the need to provide a different mask for each film. However, fixed aperture systems cannot open up or adjust the field size to cover the entire film to eliminate the unexposed borders. The radiation safety concept of collimating the x-ray beam to the body region of interest is valid in mammography, but it is of little relevance since the breast is normally completely irradiated. There is little evidence that changing the x-ray field coverage from just inside the edges of the film to just outside the edges of the film would make a clinically significant difference in image quality or significantly raise the radiation safety risk to either the patient or the equipment operator.

Adoption of the 2 percent tolerance would bring FDA into harmonization with the International Electrotechnical Commission (IEC) equipment standard. The IEC has developed a draft standard

which addresses the requirements for the safety of mammographic x-ray equipment and mammographic stereotactic devices (IEC 62B/60601-2-45). Included in this document is a requirement that the x-ray field not exceed the dimensions of the image receptor by more than 2 percent of the source-image receptor distance, in agreement with what FDA is herein proposing. In the rationale given for this decision, the IEC included a discussion of currently accepted clinical practice that involves irradiating the same field size area for all patients, which in most cases substantially overlaps the actual region of interest. The increasing use of brighter view boxes and radiographs of higher optical densities is also mentioned, along with the importance of eliminating view box glare at the film edges. Balancing this against the basic radiation safety guidance of irradiating only the area of interest, the IEC concluded that, in this case, any potential increase in patient dose was justified by the overall benefit to the population being screened.

With variable aperture collimation there is no control over how much the x-ray beam can exceed the image receptor since the operator can adjust the field larger. However, the field should not be larger than the image receptor supporting device to prevent primary beam irradiation of other parts of the body.

Manufacturers of mammographic equipment have requested that FDA address the confusion between the requirements of the x-ray performance standards and the MQSA. FDA is not requiring that the x-ray field must exceed the area of the x-ray film. Rather, FDA is providing flexibility by allowing the manufacturers to design their equipment so that the x-ray field may be used to darken the film to its borders if desired by the purchaser. Whether the film has borders or is darkened to the edges, proper masking of the film for viewing is still needed for best viewing results.

C. X-ray Transmission Through Primary Barrier

In addition to the requirements for x-ray field limitation and alignment for mammography, requirements for primary beam transmission became effective on September 5, 1978. The current requirement, § 1020.31(m), states that:

[F]or x-ray systems manufactured after September 5, 1978, which are designed only for mammography, the transmission of the primary beam through any image receptor support provided with the system shall be limited such that the exposure 5 centimeters from any accessible surface beyond the plane of the image receptor supporting device does not exceed 2.58×10^{-8} C/kg (0.1 mR) for each activation of the tube.

The intent of this requirement is to provide radiation safety for the patient beyond the plane of the image receptor. Based on the restrictions described in § 1020.31(m) and the accompanying preamble, it is clear that the intent of the image receptor supporting device (IRSD) requirement was to reduce irradiation beyond the plane of the image receptor or the IRSD which could strike the patient. Thus, primary irradiation must be blocked and reduced for any accessible area 5 centimeters (cm) beyond the image plane. It is understood that for the chest wall side some primary beam irradiation would not be blocked by the IRSD and this is allowed in order to obtain as much diagnostic information from the chest wall side of the breast as possible. Since all of the primary beam (except on the chest wall side) should be intercepted by the IRSD, a measurement only need be made of the transmitted beam and at the shortest SID which would yield the largest transmission reading. While it may be safe to allow the x-ray field to exceed the image receptor by a certain amount, and necessary in order to adequately image the breast tissue anatomy in the chest wall area, there is no adequate justification for allowing the primary beam to extend beyond the primary barrier provided by the IRSD except at the chest wall side.

An additional problem arises for those manufacturers who use their cassette as the image receptor support device and have placed attenuating material on the bottom of the cassette in order to meet the transmission requirements. Should the edge alignment requirements be increased by amendment, these manufacturers would need to add an additional barrier to their system or continue to restrict the beam to prevent unattenuated primary beam beyond the plane of the IRSD. FDA feels that the definition of an image receptor support which appears in § 1020.30(b) should be changed to indicate that the support device must provide a primary protective barrier. This should apply for any orientation of the x-ray tube and image receptor support device assembly, not just in the horizontal plane as it currently states. Furthermore, exposures should not be possible without the image receptor support device, acting as the primary barrier, being in place.

The primary barrier transmission requirement is an absolute restriction. The limit specified leaves the manufacturer free to choose the method to reduce the x-ray transmission so that it does not exceed 2.58×10^{-8} coulombs (C) per kilogram (kg) (0.1 milliroentgen (mR)) per exposure. The image receptor support device must intercept all of the primary beam (except the chest wall side) and reduce the transmitted radiation to what is considered safe and feasible. Any changes in the field sizing should ensure adherence to the transmission requirements. In the past, all systems in use for mammography had fixed aperture plates for x-ray field determination. The advent of the variable aperture BLD for mammography is potentially a problem if a beam-limiting device is opened so that primary x-rays extend beyond the primary barrier provided by the image receptor support device. In order to prevent this, a variable aperture BLD must provide some restriction on the maximum field size to ensure that the primary beam is contained within the IRSD which is also a primary barrier. In other words, with the collimator opened as wide as possible, primary x-radiation should not extend beyond the barrier, at any available SID, except at the chest wall side, and the exposure level 5 cm beyond this barrier should be less than the exposure value given previously.

FDA's position on primary barrier transmission is in agreement with that taken by the IEC. Their draft standard on safety requirements for mammography systems (62B/60601–2–45) requires primary barrier shielding to extend at least to the projection of the patient support at the chest wall side, and to extend at least 1 percent of the SID beyond the x-ray field at the other sides.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(a) and (i) and 25.34(c) 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.

V. Comments

Interested persons may, on or before January 27, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Analysis of Impacts

FDA has examined the impact of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), 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 proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and therefore is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. An analysis of available information suggests that costs to the entities most affected by this rule, including small entities, are not expected to be significant, as described in the following analysis. FDA believes that the proposed regulation will not have a significant impact on a substantial number of small entities, but conducted an initial regulatory flexibility analysis to ensure that impacts on small entities were assessed and to alert any potentially impacted entities to the opportunity to submit comments to the agency. This proposed rule will not impose costs of $100 million or more in either the private sector or State, local, and tribal governments in the aggregate. Consequently, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

In part, the proposed rule codifies the equipment performance standards established under the Mammography Quality Standards Act of 1992 (MQSA) (Pub. L. 102–539) by proposing to require only x-ray systems designed solely for mammography be marketed for mammography. This proposal updates the x-ray performance standard to reflect a standard already enforced under MQSA. Consequently, FDA expects no economic impact from this portion of the proposed rule.

The proposed rule also proposes to permit the x-ray irradiation field to extend to the edges of the x-ray film but not beyond the primary barrier provided by the image receptor support device. It further proposes to change the definition of an image receptor support device, clarifying that it must provide a primary protective barrier and that exposures should not be possible without the image receptor support device being in place, acting as the primary barrier. Exposing all of the film allows one size of film mask to be used for proper viewing of mammography films using light boxes while not allowing the beam beyond the primary barrier protects the patient from unnecessary exposure to radiation. FDA believes that most of the image receptor support devices that are currently in use provide a primary protective barrier that meets the requirements in the proposed amendments to §§ 1020.30(b) and 1020.31(m). In addition, when the manufacturer's design of the cassette holder provides the primary barrier attenuation itself, then the cassette holder is considered a part of the image receptor support device. Therefore, FDA estimates that the proposed amendments to §§ 1020.30(b) and 1020.31(m) will impose minimal new costs. This proposal also allows more flexibility for mammography facilities and accreditation bodies without compromising the public health and may reduce costs to mammography facilities and accreditation bodies by simplifying the masking of images.

The proposed rule further proposes to exempt panoramic x-ray dental units from the requirement that they be manufactured with exposure timers which automatically reset to zero or the initial setting upon premature termination of an exposure. For panoramic dental exposures, interrupting the exposure does not affect the quality of images already taken. Consequently, restarting the exposure at the initial starting point exposes patients to unnecessary radiation. This proposal removes a regulatory requirement, while still protecting the public health, and may reduce costs to dental facilities and patients.

The Safe Medical Devices Act of 1990 (Pub. L. 101–629), enacted on November 28, 1990, transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) from Title III of the PHS Act (42 U.S.C. 201 *et seq.*) (PHS Act) to chapter V of the act. These provisions regulate electronic products which emit radiation. On October 27, 1992, the MQSA (Pub. L. 102–539) was enacted to establish uniform, national quality standards for mammography. MQSA (42 U.S.C. 263b(f)(1)(B)) requires the use of radiological equipment specifically designed for mammography to be used for mammography. Similarly, § 900.12(b)(1) of the interim and final mammography regulations prohibits the use of conventional radiographic equipment for mammography. FDA has reviewed related Federal rules and has not identified any other rules that duplicate, overlap, or conflict with the proposed rule. FDA has also identified no new reporting, recordkeeping or other compliance requirements associated with this proposed rule.

There are approximately 10,000 mammography facilities in the United States. Because this potential change in the performance standard only applies to machines manufactured after the effective date of the final rule, the associated cost does not apply to those machines manufactured prior to that date. FDA estimates that approximately 10 percent of facilities replace their mammography machines in any 1 year. At this time, FDA is unable to estimate the demand for the proposed systems modifications. As discussed previously, the proposed change concerning x-ray beam collimation is less restrictive than the present standard. FDA estimates the cost per system to be between $0 and $5,000 if the system modification is made during production.

There are approximately 138,500 dental facilities in the United States of which 40 percent provide access to panoramic dental x-ray units. An uncertain number of these facilities may request the manufacturer to remove the automatic reset of the exposure timer on their panoramic machines; however, they are not required to do so. FDA believes that the facility will only make this change if it is economically or clinically advantageous to do so. FDA estimates it will cost a facility an amount equal to what would be assessed for a routine service call (approximately $150.00 or less) to remove the automatic reset function for premature termination of an exposure for existing systems. FDA believes that manufacturers no longer manufacture panoramic dental x-ray units with automatic reset exposure times.

Most, if not all, of the mammography facilities and dental facilities would be considered small under the criteria established by the Small Business Administration. FDA's registration system shows five manufacturers of panoramic dental units. Of the domestic manufacturers, none would be considered small entities. There are approximately 10 manufacturers of mammography x-ray systems. Of these

manufacturers, none would be considered small entities. FDA invites comments on this analysis of the number of entities that may be affected by the proposed changes to the performance standard.

For the mandatory changes proposed for image receptor support devices, FDA believes that most of the image receptor support devices that are currently in use provide a primary barrier that is capable of meeting the requirements in the proposed amendments to §§ 1020.30(b) and 1020.31(m). There are approximately 10,000 mammography facilities in the United States. Because this potential change in the performance standard only applies to systems manufactured after the effective date of a final rule, the costs associated with any changes that may need to be made, would not apply to those machines manufactured prior to that date. FDA estimates that approximately 10 percent of facilities replace their mammography systems in any 1 year (10 percent of 10,000 = 1,000). FDA estimates the cost per system to be between $0 and $2,000 in the event that any manufacturers are required to implement design or production changes to ensure that exposures not be permitted on their systems without a primary barrier being in place. FDA estimates approximately 95 percent of the systems currently being marketed already meet this requirement. With an annual mammography system replacement rate of 10 percent (i.e., 1,000 new systems purchased per year), FDA estimates only approximately 5 percent of these 1,000 systems may increase in cost to meet the requirement. To calculate the annual cost, FDA estimates a cost of $0 to $2,000 per system multiplied by 50 systems (5 percent of 1,000 = 50). Using this estimate, the costs are expected to be approximately, $0 to $100,000.

Under these proposed changes to the performance standard, FDA allows manufacturers and facilities to decide whether to implement any device modifications in response to the greater flexibility proposed in these mammography collimation requirements. If the benefits associated with the flexibility proposed in this rulemaking are outweighed by the costs to the facility, the facility can choose to not purchase a device which has been modified in response to the greater flexibility proposed in this rulemaking. With regard to the mandatory change proposed for the primary barrier requirement, FDA believes that the great majority of the image receptor support devices that are currently being manufactured provide a primary barrier that is capable of meeting the requirements in the proposed amendment to § 1020.31(m). Therefore, FDA does not anticipate that the proposed amendment to § 1020.31(m) will impose any significant costs.

Because most of these proposed changes to the mammography performance standard and the proposed change to the timer requirement for panoramic dental systems provide for greater flexibility, FDA considered no alternatives to accomplish the stated objectives of the applicable statutes. For the primary barrier standard proposed in § 1020.31(m), FDA considered not requiring the primary barrier to be in place to intercept the useful beam. This alternative was rejected because without the primary barrier in place, patients would be exposed to unnecessary radiation.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no new collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1020 be amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

2. Section 1020.30 is amended by alphabetically adding a definition to paragraph (b) to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(b) * * *

Image receptor supporting device means, for mammography x-ray systems, that part of the system designed to support the image receptor during a mammographic examination and to provide a primary protective barrier.

* * * * *

3. Section 1020.31 is amended by revising paragraphs (a)(2)(i), (f)(3), and (m) to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(a)

(2) * * *

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second. Except during panoramic dental radiography, termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

* * * * *

(f) * * *

(3) *Systems designed for mammography*. (i) Mammographic beam-limiting devices manufactured after (the effective date of the final rule) shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor by more than 2 percent of the SID. This requirement can be met with a system which performs as prescribed in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. For systems which allow changes in the SID, the SID indication specified in paragraphs (f)(4)(ii) and (f)(4)(iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed.

(ii) Each image receptor supporting device intended for installation on a system designed for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.

* * * * *

(m) *Primary protective barrier for mammography x-ray systems*. For mammography x-ray systems manufactured after (the effective date of the final rule).

(1) At any SID where exposures can be made, the image receptor support device shall provide a primary protective barrier which intercepts the cross section of the useful beam along every direction except at the chest wall edge.

(2) The x-ray tube shall not permit exposure unless the barrier is in place to intercept the useful beam as required in paragraph (m)(1) of this section.

(3) The transmission of the useful beam through the primary protective barrier shall be limited such that the exposure 5 centimeters from any accessible surface beyond the plane of the primary protective barrier does not exceed 2.58×10^{-8} C/kg (0.1 mR) for each activation of the tube.

(4) Compliance shall be determined with the x-ray system operated at the minimum SID for which it is designed, at the maximum rated peak tube potential, at the maximum rated product of x-ray tube current and exposure time (mAs) for the maximum rated peak tube potential, and by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters. The sensitive volume of the radiation measuring instrument shall not be positioned beyond the edge of the primary protective barrier along the chest wall side.

Dated: October 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28907 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–134]

RIN 2115–AE47

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules for the I–280 Bridge (Stickel Memorial), mile 5.8, over the Passaic River at Harrison, New Jersey, to permit the draw to open on signal after a twenty four hour advance notice is given due to the infrequency of requests to open the draw by vessels. It is expected that this proposal will relieve the bridge owner of the requirement to have a drawtender present and still provide for the needs of navigation.

DATES: Comments must be received by the Coast Guard on or before December 28, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–134) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register**.

Regulatory History

On May 18, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations Passaic River, New Jersey, in the **Federal Register** (63 FR 27240). The Coast Guard did not receive any comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water.

The current operating regulations in § 117.739(h) require the bridge to open on signal if at least eight (8) hours advance notice is given. There have been only 8 requests to open this bridge since 1987. The bridge owner, the New Jersey Department of Transportation (NJDOT), has requested relief from being required to crew the bridge because there have been so few requests to open the bridge.

The Coast Guard published a notice of proposed rulemaking on May 18, 1998, which allowed that the bridge need not open for vessels based upon the infrequency of requests to open the draw in past years. The District Commander has subsequently decided that all bridges within the First Coast Guard District, permitted as moveable bridges and required to be maintained in good operable condition by the general requirements for bridges, should continue to open for vessel traffic on an advance notice basis regardless of the frequency of the requests to open the bridge. The need to open bridges based upon the historical frequency of opening requests can be helpful in determining a reasonable time period for advance notice to be given to bridge owners for bridge openings.

Discussion of Revised Proposal

The Coast Guard proposes to amend the operating regulations to allow the draw to open on signal after a twenty four hour advance notice for openings is given, relieving the bridge owner of the requirement and expense to crew the bridge. The fact that there have been only 8 requests to open the bridge since 1987 indicates that there is insufficient need to require the bridge owner to crew the bridge on a regular basis. Since the bridge is still a moveable bridge, required to be maintained in good operable condition, the Coast Guard believes that the bridge should still be required to open for vessel traffic. Bridges placed on a need not open status should be bridges that, because of special circumstances, should never need to open for vessel traffic. The fact that there have been some requests to open the I–280 Bridge indicates that there is still a need to have the bridge operational. Based upon the number of openings since 1987, the Coast Guard believes that a twenty four hour advance notice is a reasonable period of advance notice for mariners in need of openings as well as sufficient time for the bridge owner to have a crew at the bridge to provide openings.

The Coast Guard is also correcting an error in the published mile point of the Route 7 Bridge which is currently listed at 6.9 and should be 8.9. The Route 7 Bridge regulations would then be placed after the regulations for the NJTRO Bridge in § 117.739 to maintain the ascending order of mile points in the regulation text.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that there have been only 8 requests to open this bridge in the last ten years. The Coast Guard believes this proposed rule achieves the requirement of balancing both the needs of navigation and the bridge owners responsibility to crew the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.).*

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. NJDOT will be effected by this rule in so far as they will continue to be required to maintain the operating machinery of the bridge. The continued maintenance of the operating machinery of the bridge will not result in a new expenditure of public funds but will merely be a continuation of their requirement to maintain the bridge in good operable condition. This rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.739, redesignate paragraphs (j) and (k) as paragraphs (k) and (j); amend newly redesignated paragraph (k) by removing the number ''6.9'' and adding, in its place, the number ''8.9''; and revise paragraph (h) to read as follows:

§ 117.739 Passaic River

* * * * *

(h) The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, shall open on signal after a twenty four hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: October 19, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–29046 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 126

[USCG–1998–4302]

RIN 2115–AE22

Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the regulations covering waterfront facilities handling dangerous cargoes. Current regulations would be updated to reflect improved safety procedures and modern transportation methods, such as the use of containers. This proposed rule would also update the requirements for the handling of these hazardous materials and incorporate industry standards.

DATES: Comments must reach the Coast Guard on or before December 28, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–1998–4302), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at

room PL–401, located on the Plaza Level of the Nassif Building at the same address bet3ween 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this rulemaking on the Internet at http://dms/dot/gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Ms. Pat Chesley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329. For information concerning the notice of proposed rulemaking provisions, contact LCDR John Farthing, Vessel and Facility Operating Standards Division (G–MSO–2), room 1210, (202) 267–6451, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. E-mail address is Jfarthing@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this proposed rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this proposed rulemaking (USCG–1998–4302) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. You may request a public hearing by submitting requests to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this proposed rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The regulations in 33 CFR part 126 prescribe requirements for designated waterfront facilities that handle, store, and transfer hazardous materials to and from vessels. The regulations were written in the 1950s and have not been significantly updated. On September 4, 1990, the Coast Guard published a final rule (55 FR 36252) amending part 126 to exclude its application to bulk liquid hazardous materials, other than certain liquefied gases. On August 3, 1995, the Coast Guard published a final rule (60 FR 39788) further amending part 126 to exclude its application to the remaining liquefied gases and to transfer the requirements for the control of liquefied hazardous gas transfers from 33 CFR 126.15(o) to 33 CFR part 127. As amended, part 126 applies only to facilities handling packaged and dry bulk hazardous materials.

On January 13, 1993, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) (58 FR 4127) requesting comments on proposed changes to 33 CFR part 126. The Coast Guard received 11 comments in response to the ANPRM and considered them in drafting this notice.

The Coast Guard proposes to amend part 126 to better address the hazards and precautions necessary for packaged hazardous materials, which have changed significantly with the advent of containerization. This notice also proposes to incorporate up-to-date industry standards.

Discussion of Proposed Rule

This proposed rule would set minimum safety standards for the operation of waterfront facilities transferring packaged and bulk solid hazardous materials to and from vessels. It would not preempt State and local governments from prescribing standards of their own.

All measurements in this proposed rule are in Systéme International D'Unités (SI) units with the English measurement following in parentheses. The Omnibus Trade and Competitive Act of 1988 (Pub. L. 100–418) designates the SI system as the preferred system of weights and measurements for United States trade and commerce. The American Society of Testing and Materials (ASTM) and the American Society of Mechanical Engineers (ASME) also support the conversion to metric standards.

Section 126.01 would add definitions for the terms *Break-bulk, Bulk, Container* or *freight container,* and *Transport unit.*

Section 126.03 would incorporate certain standards of ASTM and the National Fire Protection Association (NFPA) to prevent the creation of regulations which duplicate established industry standards.

Section 126.12 would allow the local Captain of the Port (COTP) to examine alternative procedures, methods, or equipment standards to be used by an operator if a required standard is physically or economically impracticable, and if an equivalent level of safety can otherwise be provided.

Section 126.15 would revise the current section to recognize the different requirements for container terminals and other designated waterfront facilities. Paragraph 126.15(a) would establish the requirements for those facilities handling break-bulk dangerous cargo, and paragraph 126.15(b) would establish the requirements for container terminals. Paragraphs 126.15(c) through 126.15(n) would apply to all designated waterfront facilities. In keeping with the Presidential Regulatory Reinvention Initiative (PRRI), many of the requirements in § 126.15 would be replaced with industry standards; primarily, selected sections from NFPA 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, 1995.

Paragraph 126.15(c) proposes requirements for fixed fire extinguishing equipment in accordance with NFPA 13, 14, and 307.

Paragraph 126.15(d) would require all firefighting equipment locations on board the facility to be conspicuously marked so they could be immediately identified during a fire emergency.

Paragraph 126.15(e) would require warning signs at the facility, ensuring standardization among all facilities to an established standard without further Federal government involvement.

Paragraph 126.15(g) would require facilities that receive foreign flag vessels to have an international shore connection accessible for firefighting purposes. Foreign vessels often have fire main connections that are dissimilar to U.S. fire hose fittings. The international shore connection would make it possible to connect dissimilar fittings.

Pargraph 126.15(h) would list controls that limit access to the waterfront facility. This would ensure safety of the facility from outside persons.

Paragraph 126.27(b) would require the facility operator to notify the COTP if certain classes of hazardous materials are handled in excess of specified amounts. The regulations would revise the existing requirements by incorporating metric units of measurement and updating the dangerous cargo hazard class identifications.

Paragraph 126.27(d). The Coast Guard was petitioned by industry to allow facilities to segregate dangerous cargo stored on the facility in accordance with Chapter 15 of the International Maritime Dangerous Goods (IMDG) Code. The

Coast Guard recognizes that the standards in 49 CFR 176.83 for vessels are essentially the same as those in Chapter 15 of the IMDG Code. The Coast Guard proposes to allow facilities to comply with 49 CFR 176.83 because these regulations are readily accessible to regulated parties, and are recognized as common practice. These standards address the basic necessities of segregation, such as protecting products form moisture, fire, and interaction with incompatible materials. Packaging, labeling, placarding, and marking of dangerous cargo must meet the standards in 49 CFR parts 171 through 180.

Section 126.30, as proposed, removes the requirement for facilities and vessels moored at the facility to obtain a hotwork permit from the COTP. To perform hotwork, they would be required to comply with NFPA 51B. Liquefied Hazardous gas (LHG) facilities will continue to obtain hotwork permits from the COTP as required in § 127.1603. The changes proposed in this NPRM will require updating of certain references in 49 CFR part 176. At the time the final rule is published, the Coast Guard will coordinate conforming amendments with the Research and Special Programs Administration (RSPA) which has responsibility for that part of the CFR.

Incorporation by reference

The material that would be incorporated by reference is listed in § 126.03. The material is available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 126.03.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Costs

The cost of compliance with part 126 to waterfront facilities affected by this proposed regulation ranges form $270 to $400 per facility for implementation. Compliance costs are comprised of the required purchases of warning signs for all facilities and an international shore connection for those facilities that conduct transfer operations with foreign flag vessels. (See Table 1).

The implementation cost to industry is $175,274. If warning signs and international shore connections are replaced every 10 years, the discounted present value costs for year 2008 are $77,824. Total costs of this proposed rule are approximately $253,098.

TABLE 1.—IMPLEMENTATION COSTS

Proposed requirements	No. affected facilities	Cost per facility	Total cost
Warning Signs	[1] 609	[2] $270	$164,430.
International Shore Connections	[3] 88	[4] 123	10,824
Total Implementation Cost			175,254

[1] USCG Marine Safety Management System (MSMS) Data Base.
[2] A.T. Kearney, Inc., ''Regulatory Impact Analysis of Waterfront Facility Hazardous Material Regulations'', Alexandria, VA (January 1994). Data adjusted for inflation.
[3] Ibid., p. 5–7.
[4] Ibid., p. 5–9.

Benefits

The primary benefits to industry are the establishment of requirements that facilitate and foster industry compliance and improve safety methods. They are derived through the avoidance of costs incurred from vessel or property damage, and casualty incidents. The proposed requirements are expected to contribute to a higher level of marine safety.

The dollar value of the direct benefits derived from this proposed rulemaking is difficult to estimate. However, because the proposed regulations are intended to better address the hazards and precautions necessary for packaged hazardous materials, avoidance of incidents involving handling, storing, stowing, loading, discharging or transferring of hazardous materials are anticipated to decrease in both number and severity. The Coast Guard reviewed MSIS data for incidents on waterfront facilities during the period 1993–1997. The data shows that annually, about 10 percent, or 62, of the waterfront facilities affected by this proposed regulation are involved in incidents of varying degrees. About 75 percent of these incidents are allusions, collisions, equipment and structural failure. Less than 1 percent of incidents is the result of fire. Property damages range from as low as $90,000 to a high of $1 million annually during the five-year period under examination. If the effectiveness rate of this proposed rule is only 10 percent of the average property damage costs incurred over a ten-year period, the anticipated benefits are expected to exceed the total cost.

The Coast Guard also expects that removing the requirement to obtain a hotwork permit from the COTP, and adopting NFPA standards in its place, will reduce workload burden on both industry and the Coast Guard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, because although this proposed rule may have minimal impact on a limited number of facilities owned or operated by small entities, the estimated total implementation costs for these facilities are $10,215. Thirty-one general cargo terminals affected would currently qualify as small businesses. If warning signs and international shore connections are replaced every 10 years, the discounted present value costs for year 2008 are $4,536. The total compliance costs to small businesses are estimated to be $14,751. If, however, you think that your business or organization qualifies as a small entity, and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Vessel and Facility Operating Standards Division (G–MSO–2) at 202–267–6451.

Collection of Information (COI)

This proposed rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520). As defined in 5 CFR 1320.3(c), collection of information includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follows. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. The Coast Coast is currently requesting a revision of a current collection of information, under:

Dot No.: 2115.

OMB No.: 2115–0054.

Administration: U.S. Coast Guard.

Title: Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities.

Summary of the Collection of Information

The Coast Guard has prepared and will seek approval for this collection of information under proposed regulations for Handling of Class 1 (Explosive) Materials or Other Dangerous Cargoes within or Contiguous to Waterfront Facilities. This proposal contains collection of information as required in § 126.15. Section 126.30 proposes to remove the requirement for facilities and vessels moored at the facility to obtain hotwork permits from COTP. This proposal does not remove the hotwork permit requirement found in § 127.1603 for facilities handling Liquefied Hazardous Gas (LHG). A currently approved COI is revised to reflect the proposed requirement and reduction of this paperwork collection.

Need for Information: Under Title 33 CFR 126.15(e), Coast Guard has the authority to require the posting of warning signs that meet the requirements of NFPA 307, Chapter 7–8.7.

Proposed Use of Information: The Coast Guard will use this information to ensure that waterfront facilities are in compliance with safety standards.

Description of the Respondents: Owners and operators or waterfront facilities handling explosive materials, LHG facilities, and other dangerous cargoes.

Number of Respondents: 609.

Reduction of Hotwork Permits Respondents: 675.

Frequency of Response: The initial posting of warning signs, hotwork requests, and occasional inspection.

Burden of Response: 15 minutes annually per facility for warning signs; and, 30 minutes per hotwork permit for designated LHG facilities.

Estimated Total Annual Burden: An annual reporting and recordkeeping burden of 318 hours for both warning signs and hotwork permits requirements.

As required by section 3507(d) of the Paperwork reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. The Coast Guard solicits public comment on the proposed collection of information to (1) evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments to the Coast Guard where indicated under **ADDRESSES** by the date under DATES.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined the this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandates cause those entities to spend, in the aggregate, $100 million or more in one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local, or tribal governments or the private sector.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1(34)(a) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further

environmental documentation. This proposed rule concerns handling and storage procedures which, in themselves, would have no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 126 as follows:

PART 126—HANDLING OF CLASS 1 (EXPLOSIVE) MATERIALS OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES

1. The authority citation for part 126 continues to read as follows:

Authoirty: 33 U.S.C. 1231; 49 CFR 1.46.

2. In § 126.01, revise the section heading; and add, in alphabetical order, a definition for *Break-Bulk, Bulk, Container* or *freight container* and *Transport unit* to read as follows:

§ 126.01 Definitions.

Break-bulk

Means packages of dangerous cargo that are handled individually, palletized, or unitized for purposes of transportation as opposed to materials in bulk and containerized freight.

Bulk means without mark or count and directly loaded or unloaded to or from a hold or tank on a vessel without the use of containers or break-bulk packaging.

* * * * *

Container or *freight container* means or reusable container that has a volume of 1.81 cubic meters (64 cubic feet) or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages (in unit form) during transportation.

* * * * *

Transport unit means a transport vehicle or a freight container.

* * * * *

3. add § 126.03 to read as follows:

§ 126.03 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700 Washington, DC, 20002, and at the U.S. Coast Guard, Vessel and Facility Operation Standards Division (G–MSO–2), 2100 Second Street SW., room 1210, Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

American Society for Testing and Materials (ASTM)	
1916 Race Street, Philadelphia, PA 19103:	
ASTM F–1121, International Shore connections for Marine Fire Applicants, 1987 Edition	126.15
National Fire Protection Association (NFPA)	
One Batterymarch Park, P.O. Box 9101, Quicny, MA 02269–9101:	
NFPA 10 Standard for Portable Fire Extinguishers, 1998 Edition	126.15
NFPA 13, Standard for the Installation of Sprinkler Systems, 1996 Edition	126.15
NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 1996 Edition	126.15
NFPA 30, Flammable and Combustible Liquids Code, 1996	126.15
NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 1994 Edition.	126.30
NFPA 70, National Electrical code, 1996	126.15
NFPA 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, 1995 Edition	126.15

4. Add § 126.12 to read as follows:

§ 12612 What are alternative methods of compliance and how are they examined?

(a) An owner or operator or a waterfront facility may submit a written request to the COTP for examination of an alternative method of compliance with any requirement in this part if—

(1) Compliance with the regulations is economically or physically impractical; and

(2) The alternative requested provides an equivalent level of safety.

(b) The COTP will examine the request and provide an answer, in writing, within 30 days of receipt of the request.

5. In § 126.15, revise the section heading and paragraphs (a) through (n) to read as follows:

§ 126.15 What conditions must be fulfilled to be designated waterfront facility?

* * * * *

(a) For break-bulk dangerous cargo not in transport units:

(1) *Arrangment of cargo, freight, merchandise or material.* Cargo, freight, merchandise, and other items or materials on the facility must be arranged to provide access for firefighting and clearance for fire prevention in accordance with NFPA 307, Chapter 8–5.

(2) *Portable fire extinguishers.* Each facility must have and maintain in adequate quantities, locations and types of portable fire extinguishers that meet the requirements of NFPA 10. These extinguishers must be inspected and maintained in accordance with NFPA 10.

(3) *Electrical systems.* All new electrical equipment and wiring installed on the facility must be of the kind specified by, and installed in accordance with, NFPA 70. All defective or dangerous electrical equipment and wiring must be promptly repaired, replaced, or permanently disconnected.

(4) *Heating equipment and other sources of ignition.* Open fires and open-flame lamps are prohibited on the facility. Heating equipment must meet the requirements of NFPA 307, Chapter 9–4.

(5) *Maintenance stores and supplies.* Hazardous material used in the operation or maintenance of the facility may be stored only in amounts necessary for normal operating conditions. These materials must be stored in compartments that are remote from combustible material; constructed to provide safe storage; and kept clean and free of scrap materials, empty containers, soiled wiping rags, waste, and other debris. Flammable liquids must be stored in accordance with NFPA 30, Chapter 4.

(b) For dangerous cargo in transport units:

(1) *Terminal yards.* Terminal yards must conform to the standard in NFPA 307, Chapter 5.

(2) *Containers.* Containers packed with dangerous cargo shall be vertically stacked no more than four (4) high on the facility.

(c) *Fire extinguishing equipment.* Each facility must have an maintain in adequate quantities, locations and types, fire extinguishing equipment such as automatic sprinklers, hydrants, hose connections, and a firefighting water supply in accordance with NFPA 13, 14, and 307.

(d) *Fire appliance location markings.* The location of all fire appliances such as hydrants, standpipes, hose stations, fire extinguishers, and fire alarm boxes must be conspicuously marked and readily accessible in accordance with NFPA 10, 13, 14, and 307.

(e) *Warning signs.* Warning signs must be constructed and installed in accordance with NFPA 307, Chapter 7–8.7.

(f) *Lighting.* If the facility transfers dangerous cargo between sunset and sunrise, then it must have outdoor lighting that adequately illuminates the transfer work area. This lighting must be installed and maintained in accordance with NFPA 70, and must be located or shielded so that it cannot be mistaken for an aid to navigation and does not interfere with navigation on waterways.

(g) *International shore connection.* If the facility conducts cargo operations with a foreign-flag vessel, then it must have an international shore connection meeting ASTM F–1121.

(h) *Access to the facility.* Whenever dangerous cargo is transferred or stored on a waterfront facility, access to the facility is limited to—

(1) Personnel working on the facility or vessel;

(2) Delivery and service personnel in the course of their business;

(3) Coast Guard and other Federal, State, and local officials;

(4) Local emergency personnel, such as police officers and firemen; and

(5) Other persons authorized by the owner or operator of the facility.

(i) *Security measures.* Guards must be stationed, or equivalent controls acceptable to the COTP must be used to: deter and detect unlawful entrance; detect and report fire hazards, fires, and releases of dangerous cargoes and hazardous materials; check the readiness of protective equipment; and report other emergency situations at the facility.

(j) *Coast Guard personnel.* At any time, Coast Guard personnel may enter the facility to conduct inspections or board vessels moored at the facility.

(k) *Pier automotive equipment, trucks and other motor vehicles.* When dangerous cargo is being transferred or stored on a facility, material handling equipment, trucks, and other motor vehicles operated by internal combustion engines must meet the requirements of NFPA 307, Chapter 9.

(l) *Smoking.* Smoking is allowed on a facility where permitted under State or local law. Signs must be conspicuously posted marking authorized smoking areas. ''No Smoking'' signs must be conspicuously posted elsewhere on the facility.

(m) *Rubbish and waste materials.* All rubbish, debris, and waste materials must be placed in adequate receptacles.

(n) *Adequacy of equipment, materials and standards.* As used in this section, the word *adequate* means that determination which a reasonable person would make under the circumstances of a particular situation. If the COTP inspects the facility and determines that the equipment, materials or standards are inadequate, then the COTP must inform the owner or operator in writing and must provide an opportunity to correct any deficiencies.

6. In § 126.27, revise paragraphs (b) and (d) through (i) and add paragraphs (j) through (l) to read as follows:

§ 126.27 General permit for handling dangerous cargo.

* * * * *

(b) The COTP must be notified before the following classes of dangerous cargo are handled, stored, stowed, loaded, discharged, or transported, in the net weight amounts specified, except when contained within railroad or highway vehicles being transported across or on the waterfront facility solely for transfer to or from a railroad car ferry, highway vehicle ferry, or carfloat:

(1) Class 1, Division 1.3 and Division 1.5 (Explosive) materials, in excess of 36,400 kg (40 net tons) at any one time.

(2) Class 2, Division 2.1 (Flammable Gas) or Division 2.3 (Poison Gas) materials in excess of 72,800 kg (80 net tons) at any one time.

(3) A Class 7 (Radioactive) material in a highway route controlled quantity, as defined in 49 CFR 173.403.

* * * * *

(d) Break-bulk dangerous cargo must be segregated in accordance with 49 CFR 176.83(a) through (c). No separation is required for break-bulk dangerous cargo in limited quantity packaging.

(e) Transport units, freight containers and portable tanks containing dangerous cargo must be segregated in accordance with 49 CFR 176.83(a), (b), and (f).

(f) Break-bulk dangerous cargo must be segregated from transport units containing dangerous cargo in accordance with 49 CFR 176.83(e).

(g) Solid dangerous bulk cargo must be separated to prevent the interaction of incompatible materials in the event of an accident. Cargo not required to be segregated when in break-bulk form is not required to be segregated when in bulk form. Dangerous cargo in break-bulk form must be segregated from solid dangerous cargo in bulk in accordance with 49 CFR 176.83.

(h) Materials that are dangerous when wet (Division 4.3), water-soluble oxidizers (Division 5.1), and corrosive solids (Class 8) must be stored in a manner that prevents them from coming into contact with water.

(i) Corrosive liquids (Class 8) and liquid oxidizers (Division 5.1) must be handled and stored so that, in the event of a leak from their packaging, they would not come in contact with organic materials.

(j) Dangerous cargo stored on the facility must be arranged in a manner that retards the spread of fire, such as by interspersing dangerous cargo with inert or fire retardant material.

(k) Dangerous cargo stored on the facility, but not intended for use on the facility, must be packaged, marked, and labeled in accordance with 49 CFR parts 171 through 180, as if the material was in transportation.

(l) Class 7 (Radioactive) material must be stored as specified in 49 CFR 173.447.

7. Add § 126.30 to read as follows:

§ 126.30 What are the conditions for conducting welding and hotwork?

Facility operators are responsible for all welding or hotwork conducted on or at the facility. Vessel operators are responsible for all welding or hotwork conducted on vessels moored to the facility. The COTP may require that the operator of a facility or a vessel moored thereto, to provide notification before any welding or hotwork operations are conducted. Any welding or hotwork operations must be conducted in accordance with NFPA 51B. The vessel or facility operator must ensure that the following additional conditions or criteria are met:

(a) Welding or hotwork is prohibited during gas freeing operations, within 30.5 meters (100 feet) of bulk cargo operations involving flammable or combustible materials, within 30.5 meters (100 feet) of fueling operations, within 30.5 meters (100 feet) of explosives or 15.25 meters (50 feet) of other hazardous materials.

(b) If the welding or hotwork is on the boundary of a compartment (i.e., bulkhead, wall or deck), then an

additional fire watch must be stationed in the adjoining compartment.

(c) Personnel on fire watch must have no other duties except to watch for the presence of fire and to prevent the development of hazardous conditions.

(d) Flammable vapors, liquids or solids must be completely removed from any container, pipe or transfer line prior to welding or hotwork.

(e) Tanks used for storage of flammable or combustible substances must be tested and certified gas free prior to starting hotwork.

(f) Proper safety precautions in relation to purging, inserting, or venting must be followed for all hotwork on containers.

(g) All local laws and ordinances shall be observed.

(h) In case of a fire or other hazard, all cutting, welding or other hotwork equipment shall be completely shut down.

Dated: October 13, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–28842 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Proposed Domestic Mail Manual Changes to Implement New Labeling List L001 and to Implement Package Reallocation for Periodicals and Standard Mail (A) Flats Placed on Pallets

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The migration of flat-size Periodicals and Standard Mail (A) from sacks to pallets during the past several years has compelled both the Postal Service and the mailing community to take a closer look at how mail is being sorted to pallets to identify opportunities for improvement. Early last year, the Mailers Technical Advisory Committee (MTAC) Presort Optimization Work Group, comprised of representatives of the Postal Service, presort software vendors, mail owners, and printers, was established to study and recommend changes in presort software and sortation levels to improve the overall pattern of containerization of mail by reducing or eliminating residual mail and by reducing or eliminating inefficient use of containers.

The MTAC work group has identified two significant opportunities to improve the presort of palletized Periodicals and Standard Mail (A) flats. These are based on (1) protecting the sectional center facility (SCF) pallet level through the reallocation of packages from finer-level pallets to higher-level pallets (e.g., by moving packages from a 5-digit or 3-digit pallet to an SCF pallet that would not otherwise be created) and (2) by increasing the amount of mail that can be sorted to the 5-digit level through the creation of Domestic Mail Manual (DMM) labeling list L001. L001 is a 5-digit scheme list that will be required for the preparation of Periodical and Standard Mail (A) pallets and carrier routes sacks. This 5-digit/scheme sort will yield 5-digit scheme pallets and carrier routes sacks for those 5-digit ZIP Code zones listed in L001 and 5-digit pallets and carrier routes sacks for ZIP Codes not listed in L001. The 5-digit ZIP Code zones in each scheme will be treated as a single presort destination subject to a single pallet or sack minimum volume, with no further separation by 5-digit prefix required.

The Postal Service is proposing requiring mailers to sort all palletized flats packages and sacked carrier route flats packages of Periodicals and Standard Mail (A) using labeling list L001 to create 5-digit scheme pallets and 5-digit scheme carrier routes sacks. Although package reallocation will be optional when initially implemented, the Postal Service believes that the opportunities it offers for more consistent service warrant exploring the possibility of requiring it at some future date.

The proposed standards for package reallocation and 5-digit/scheme sort for palletized flats will also apply to Periodicals irregular parcels, which are prepared under the same standards that apply to flats, and to presorted Standard Mail (A) irregular parcels that are part of a mailing job prepared in part as FSM 1000 automation flats placed on pallets. The residual shape surcharge for non-letter, non-flat-size mail will apply to the Standard Mail (A) irregular parcels.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Business Mail Acceptance, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–6808. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION:

Package Reallocation to Protect the SCF Pallet

Under current rules for preparing packages of flats on pallets, mailers are required to prepare SCF pallets after preparing required 5-digit and optional 3-digit pallets. Many mailers choose to prepare optional 3-digit pallets, particularly when preparing regional or large volume national mailings. They can do this by selecting the option in their presort software that will result in the preparation of 3-digit pallets for the entire job (list) that is being processed. Generally, the preparation of 3-digit pallets benefits postal operations and improves service. In instances where an SCF serves multiple 3-digit ZIP Code areas, however, there are many situations where the preparation of 3-digit pallets causes mail that would otherwise be prepared on SCF pallets to be sorted to a pallet level that is less finely sorted.

A multiple 3-digit SCF is often comprised of both high-and low-density 3-digit ZIP Code service areas. If a mailer selects the presort software option for preparing 3-digit pallets, it is common for a mailing to have sufficient volume to meet a mailer-specified pallet weight minimum for high-density 3-digit ZIP Codes but not enough volume to meet the pallet weight minimum for the remaining lower density 3-digit ZIP Codes. Consequently, mail for the lower density 3-digit ZIP Codes often falls to a less finely sorted pallet level beyond the SCF level (e.g., to an ADC or BMC pallet). Always preparing 3-digit pallets can have a negative impact on delivery consistency for a mailing job because some mail destined to an SCF service area may be on 5-digit and 3-digit pallets, which may also be drop shipped to the SCF, while the remaining mail for the same SCF service area may be on ADC or BMC pallets or in the appropriate level sack. Mail on the ADC or BMC pallets or in sacks may be entered into the postal processing system further upstream (e.g., at a BMC or at the origin post office where the mailing was prepared).

Using current presort software, the primary option available to mailers for remedying the situation described above is to deactivate the option for preparing 3-digit pallets. This will result in mail for all 3-digit ZIP Codes within a multiple-3-digit ZIP Code SCF service area being combined to make an SCF pallet, based on the minimum pallet weight selected, after all required 5-digit pallets are prepared. However, because 3-digits pallets do have value for mailers and postal operations, their elimination is not an optimal solution. Discussions

with the major presort software vendors have revealed that presort programs can be created that will enable optimal SCF palletization without necessarily eliminating 3-digit pallets. The process, which is known as package reallocation, prevents sortation to the 3-digit pallet level when such preparation impedes optimal SCF palletization. Moreover, the process will reallocate the minimum amount of mail necessary from high-density pallets at a finer level of sortation (5-digit/scheme or 3-digit pallets) to create an SCF pallet that would not otherwise have been prepared without reallocation. This will help draw mail back to the SCF pallet level from ADC/BMC pallets and will also allow mailers to palletize mail that would otherwise be required to be prepared in sacks due to the elimination of standards for preparing mixed ADC and mixed BMC pallets of flats that became effective October 4, 1998.

Increasing the Amount Of Mail At the 5-Digit Level by Creating a 5-digit/scheme List

The Postal Service is also proposing implementation of a new 5-digit/scheme list for pallets and carrier routes sacks of Periodicals and Standard Mail (A) flat packages and bundles that is similar to the old DMM L001 list. However, there are three primary differences in the new list and the old DMM L001 list: (1) the old list was a multi-coded city list while the new list is a ''scheme type'' list of combinations of 5-digits based on where the flats are actually worked within a single processing facility; (2) the old L001 list was used for package preparation as well as sack and pallet preparation while the new list will be used only for sack and pallet preparation; and (3) the old L001 pallet level was optional while the new DMM L001 list will become part of the required 5-digit/scheme pallet level. Therefore, the 5-digit pallet presort level for packages of flats will become a 5-digit/scheme presort level and mailers will not prepare individual 5-digit pallets to zones that are listed as part of a combination on the new L001 list; instead they will prepare them as an L001 pallet. The expected results are an increase in the amount of mail that can be placed on 5-digit (to be renamed 5-digit/scheme) pallets and the likelihood that postal plants will be able to crossdock more mail directly to delivery offices.

With the implementation of the new 5-digit scheme pallet, the SCF pallet level may become more vulnerable than it is today. For instance, if some mail for low-density 3-digits is already falling through the SCF level, because of the preparation of other 3-digit pallets for areas within the same SCF, then the 5-digit scheme pallet will likely amplify the problem as more mail is potentially pulled away from the SCF pallet. Package reallocation will help to address this. It should be noted that although the examples reference multiple 3-digit SCF packages, reallocation will also apply to single 3-digit SCFs.

Implementation Dates

The Postal Service proposes requiring 5-digit/scheme pallets and carrier routes sacks using labeling list L001 effective May 1999, and implementing the option to prepare pallets using package reallocation at the same time in conjunction with presort software releases incorporating the April address information system releases. This will allow presort vendors and mailers sufficient time to incorporate changes related to the R97–1 rate case before making changes necessary to support L001 and reallocation. This will also allow them time to have palletization software tested and PAVE-certified.

Summary of Proposed USPS Revisions

Reallocation Rules

Determine Whether Reallocation Should be Performed

The presort software will identify instances where some mail for an SCF service area would fall beyond the SCF level (e.g., on ADC or BMC pallets) if all required 5-digit/scheme and optional 3-digit pallets, if selected, are prepared for the SCF service area. The SCF pallet level serves as a dividing line and reallocation is performed only when there is mail for the same SCF service area on both sides of the dividing line.

The software will next determine the weight of mail that would drop beyond the SCF level and the minimum weight of mail (correlating to a minimum number of pieces in the mailing) that is required to bring that mail back to the SCF level. For example, if a mailer sets 500 pounds as the minimum weight for SCF pallets and there are 300 pounds of mail that fall beyond the SCF pallet level after preparation of 5-digit/scheme and/or 3-digit pallet(s), then 200 pounds would be the minimum volume to be reallocated to bring the 300 pounds back to the SCF level.

General Reallocation Rules

a. Package preparation is not Affected by the Reallocation process. This process should always reallocate only the minimum number of complete packages necessary to create an SCF pallet meeting the minimum pallet weight selected. Based on the weight of individual pieces within a package, the weight of mail that is reallocated will often be slightly more than the minimum volume required to create an SCF pallet. For example, if a mailer selects 250 pounds as the minimum SCF pallet weight and 239 pounds of mail would fall beyond the SCF level after 5-digit/scheme and 3-digit pallets are prepared for a specific SCF service area, the software may find the smallest package available for reallocation on a candidate 3-digit pallet that contains 16 pieces that each weigh 0.8125 pound. As a result, the total weight of the mail that will be reallocated is 13 pounds and the SCF pallet that will be created will contain 252 pounds of mail.

b. Reallocate packages from the highest (least finely sorted) available pallet level possible. For example, attempt to reallocate some mail from a 3-digit pallet first; if that is not possible, attempt to eliminate a 3-digit pallet and reallocate all mail from that pallet to create an SCF pallet. Finally, if mail cannot be reallocated from a 3-digit pallet, attempt to reallocate some mail from a 5-digit/scheme pallet.

c. The reallocation process may result in the elimination of a 3-digit pallet to create an SCF pallet, but a 5-digit/scheme pallet may not be eliminated in order to create an SCF pallet.

d. When reallocating mail to create an SCF pallet, reallocate mail from only one pallet. This may be accomplished by reallocating a portion of a 3-digit pallet, reallocating all mail from a 3-digit pallet, or reallocating a portion of a 5-digit/scheme pallet following the sequence in b.

e. Mailers may use any minimum pallet weight(s) permitted by DMM standards and may use different minimum weights for different pallet levels in conjunction with package reallocation. For example, a mailer may select 500 pounds as the minimum weight for creating 5-digit/scheme pallets, 1000 pounds for optional 3-digit pallets, and 250 pounds for SCF pallets.

Priority for Reallocation of Packages

3-digit pallets will remain optional. If 3-digit pallets are prepared, attempt to reallocate mail by following these steps:

a. The software will attempt to identify a 3-digit pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the SCF level back to the SCF level. There must be a sufficient volume of mail remaining on the 3-digit pallet after reallocation to meet the 3-digit pallet weight minimum established by the mailer in compliance

with applicable DMM standards. If a 3-digit pallet of adequate weight is available, then an SCF pallet will be prepared by reallocating some mail from the 3-digit pallet and combining it with the mail that would have fallen beyond the SCF level. For example, when a mailer sets the minimum pallet weight for all presort levels at 500 pounds, if there are 300 pounds of mail beyond the SCF dividing line, a minimum of 200 pounds needs to be reallocated. An adequate weight 3-digit pallet would be one containing a minimum of 700 pounds of mail. After reallocation of a minimum of 200 pounds of mail, 500 or more pounds of mail would remain on the 3-digit pallet and this would meet the minimum pallet weight standard.

b. If no single 3-digit pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in the previous step, then eliminate one 3-digit pallet and reallocate all of the mail to an SCF pallet that also contains the mail that would have fallen through the SCF level. The result will be that the software will not prepare one 3-digit pallet per any affected SCF service area (i.e., it eliminates a 3-digit pallet) if it is detrimental to the SCF pallet.

Because 5-digit/scheme pallets provide savings in both pallet and package handlings, whenever a 3-digit pallet is available, the software should eliminate a 3-digit pallet instead of borrowing mail from a 5-digit/scheme pallet.

c. If there are no 3-digit pallets, the software will look for a 5-digit/scheme pallet of adequate weight that can support reallocation of one or more packages to bring the mail that would fall through the SCF level back to the SCF level. A sufficient volume of mail must remain on the 5-digit/scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit/scheme pallet of adequate weight is available, the reallocated packages will be combined with the mail that would have fallen through the SCF level.

If no single 5-digit/scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in the previous step, then no packages will be reallocated and an SCF pallet will not be prepared. Under this scenario, the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack. The reallocation standards do not allow a 5-digit/scheme pallet to be eliminated in order to protect an SCF pallet.

If 3-digit pallets are not prepared, follow these steps:

a. The software will attempt to identify a 5-digit/scheme pallet of adequate weight that can support reallocation of one or more packages to bring the mail that would fall through the SCF level back to the SCF level. A sufficient volume of mail must remain on the 5-digit/scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit/scheme pallet of adequate weight is available, the reallocated packages will be combined with the mail that would have fallen through the SCF level.

b. If no single 5-digit/scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in the previous step, then no packages will be reallocated and an SCF pallet will not be prepared. Under this scenario, the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack. The reallocation standards do not allow a 5-digit/scheme pallet to be eliminated in order to protect an SCF pallet.

5-digit/scheme pallets will not be permitted to be eliminated for the following reasons: (1) these pallets may be cross-docked to delivery units and are therefore valuable to postal operations as well as to customers for service, and (2) Periodicals mailers have expressed concerns about the cost and corresponding rate impact of eliminating 5-digit pallets. Therefore, to minimize the amount of mail that will shift from that level to the SCF, mail may be reallocated from 5-digit/scheme pallets only if sufficient volumes remain to retain the 5-digit/scheme pallet.

Moreover, the Postal Service expects a significant shift of more mail to the 5-digit/scheme pallet level as a result of required use of labeling list L001. Therefore, any reallocation of mail from the 5-digit/scheme level to the SCF level will be more than offset by the new volume that will be captured by the required 5-digit/scheme pallet.

Documentation of Reallocation for Verification and Presort Accuracy Validation and Evaluation (PAVE) Certification

In developing the proposed standards for reallocation, the MTAC work group considered what information would be needed during the postal verification process to allow acceptance personnel to identify whether reallocation had been performed and determine if it had been performed correctly. It was determined that proper reallocation could best be ensured by: (1) keeping the rules as simple as possible by employing a one-to-one relationship in the reallocation process; that is, mail from only one pallet may be reallocated to create an SCF pallet; and (2) requiring any mailer who uses reallocation to use PAVE-certified presort software that has been certified to meet the reallocation standards.

Instances where mail is reallocated to protect an SCF pallet will be documented on the USPS Qualification Report by designating the protected SCF pallet with an identifier of ''PSCF.'' This identifier will be used only on the USPS Qualification Report and will not be required to appear on pallet labels or on any other mailing documentation. Furthermore, the MTAC Mail.DAT Work Group has indicated that they will accommodate the ''PSCF'' identifier in their data file structure and that they will make the appropriate changes to support verification.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

Accordingly, the Postal Service proposes the following revisions to the Domestic Mail manual, incorporated by reference in 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as follows:

E ELIGIBILITY

E200 Periodicals

* * * * *

E230 Nonautomation Rates

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

2.2 Eligibility

* * * * *

[Revise 2.2a to add the word ''scheme'' before ''carrier routes sacks'' as follows:]

a. The basic carrier route rate applies to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier route, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route or 5-digit/scheme carrier routes sacks.

* * * * *

E250 Destination Entry

* * * * *

2.0 DDU RATE

2.1 Eligibility

[Revise the second sentence of 2.1 by adding the word ''scheme'' before ''carrier routes sacks'' as follows:]

* * * Copies claimed at DDU rates must be part of a carrier route package placed in a carrier route tray or sack, a 5-digit carrier routes tray, or a 5-digit/scheme carrier routes sack for flats and irregular parcels, under M200, or palletized under M045, and otherwise eligible for and claimed at a carrier route rate. * * *

* * * * *

E600 Standard Mail

* * * * *

E630 Nonautomation Presort Rates

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

2.8 Basic Rates

Basic (nonautomation) carrier route rates apply to each piece that is sorted under M620 into the corresponding qualifying groups:

* * * * *

[Revise 2.8b to add the word ''scheme'' before ''carrier routes sacks'' as follows:]

b. Flat-size pieces in a carrier route package of 10 or more pieces palletized under M045, or placed in a carrier route sack containing at least 125 pieces or 15 pounds of pieces or in a 5-digit/scheme carrier routes sack.

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

7.0 DDU DISCOUNTS

* * * * *

7.2 Eligibility

[Revise the first sentence of 7.2 to provide DDU rate eligibility for carrier route flats placed in 5-digit/scheme carrier routes sacks, as follows:]

Pieces in a mailing that meet the standards in 1.0 through 4.0 and 7.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area (carrier routes), and placed in properly prepared and labeled carrier route packages sorted to carrier route trays (letters) or sacks (flats and irregular parcels), 5-digit carrier routes trays (letters) or sacks (irregular parcels), or 5-digit/scheme carrier routes sacks (flats) under M600, or palletized under M045, and otherwise eligible for and claimed at a carrier route rate. * * *

* * * * *

L Labeling Lists

L000 General Use

[Amend L000 by adding new labeling list L001 as follows:]

L001 5-Digit Scheme—Periodical and Standard (A) Flats

When required by the standards for specific rates, flats packages for the 5-digit ZIP Codes shown in Column A must be combined on pallets or in carrier routes sacks labeled to the corresponding destination shown in Column B.

BILLING CODE 7710–12–P

L000 General Use

L001 5-Digit Scheme –Periodical and Standard (A) Flats

When required by the standards for specific rates, flats packages for the 5-digit ZIP Codes shown in Column A must be combined on pallets or in carrier routes sacks labeled to the corresponding destination shown in Column B.

Column A ZIP Codes	Column B Label to
00901, 02	SAN JUAN PR 00901
00907, 08	SAN JUAN PR 00907
00909, 10	SAN JUAN PR 00909
00911-14	SAN JUAN PR 00911
00915, 16	SAN JUAN PR 00915
00917-19	SAN JUAN PR 00917
00920-22, 68	SAN JUAN PR 00920
00923, 24, 29	SAN JUAN PR 00923
00925, 27, 28	SAN JUAN PR 00925
00958, 60	BAYAMON PR 00960
00956, 57, 59, 61	BAYAMON PR 00961
00962, 63, 65	CATANO PR 00962
00966, 67, 69, 70	GUAYNABO PR 00970
00979, 82-88	CAROLINA PR 00982
01013-22	CHICOPEE MA 01013
01432, 33	AYER MA 01432
01702-05	FRAMINGHAM MA 01702
01830-32	HAVERHILL MA 01830
01833-35	GEORGETOWN MA 01833
01840-43	LAWRENCE MA 01840
01850-54	LOWELL MA 01850
01901-04, 10	LYNN MA 01901
01950-52	NEWBURYPORT MA 01950
02540, 41	FALMOUTH MA 02540
02664, 73	SOUTH YARMOUTH MA 02664
02860-65	PAWTUCKET RI 02860
02879-83	WAKEFIELD RI 02879
02886-89	WARWICK RI 02886
03051, 52	HUDSON NH 03051
03060-63	NASHUA NH 03060
03101-11	MANCHESTER NH 03101
03246, 47	LACONIA NH 03246
03301-06	CONCORD NH 03301
03431, 35	KEENE NH 03431
03458, 60	PETERBOROUGH NH 03458
03801-04	PORTSMOUTH NH 03801
03820, 22	DOVER NH 03820
03839, 67, 68	ROCHESTER NH 03839
04101, 08	PORTLAND ME 04101
05301-04	BRATTLEBORO VT 05301
05401-07	BURLINGTON VT 05401
05601-04, 09, 20, 33	MONTPELIER VT 05601
06050-53	NEW BRITAIN CT 06050
06701-49	WATERBURY CT 06701
06777, 93, 94	WASHINGTON DEPOT CT 06777
06810-13, 16, 17	DANBURY CT 06810
06830, 31, 36	GREENWICH CT 06830
06850-60	NORWALK CT 06850
06880, 81	WESTPORT CT 06880
07004, 06, 07	CALDWELL NJ 07006
07011-15	CLIFTON NJ 07015
07017-19	EAST ORANGE NJ 07019
07024, 25	FORT LEE NJ 07024
07031, 32	KEARNY NJ 07032

Column A ZIP Codes	Column B Label to
07042-44	MONTCLAIR NJ 07042
07050-52	ORANGE NJ 07050
07055-57	PASSAIC NJ 07055
07059-63	PLAINFIELD NJ 07061
07065-67	RAHWAY NJ 07065
07070-75	RUTHERFORD NJ 07070
07090-92	WESTFIELD NJ 07091
07094, 96	SECAUCUS NJ 07094
07401, 17, 23, 46, 58, 63, 81, 95, 98	ALLENDALE NJ 07401
07450-52	RIDGEWOOD NJ 07450
07470, 74, 77	WAYNE NJ 07470
07601-08	HACKENSACK NJ 07606
07631, 32	ENGLEWOOD NJ 07631
07701, 02, 04	REDBANK NJ 07701
07801-03, 06, 69	DOVER NJ 07801
07901, 02	SUMMIT NJ 07901
07960-63	MORRISTOWN NJ 07960
08002,03, 34	CHERRY HILL NJ 08034
08540-44	PRINCETON NJ 08540
08723, 24	BRICK NJ 08723
08753-57	TOMS RIVER NJ 08753
08817-20, 37	EDISON NJ 08817
08854, 55	PISCATAWAY NJ 08854
08861-63	PERTH AMBOY NJ 08861
08871, 72	SAYREVILLE NJ 08872
08873, 75	SOMERSET NJ 08873
08878, 79	SOUTH AMBOY 08879
10001, 26, 27, 29-35, 37, 39, 40, 43, 81	JAF NY 10001
10002, 04-08, 12-15, 38, 41, 45-48, 80	CSS NY 10007
10017, 44	GRAND CENTRAL NY 10017
10022, 55	FDR NY 10022
10150-55	FDR NY 10150
10163-78	GRAND CENTRAL NY 10163
10003, 09-11, 16, 18-21, 23-25, 28, 36	MORGAN NY 10199
10520, 21	CROTON ON HUDSON NY 10520
10550-59	MOUNT VERNON NY 10550
10570-72	PLEASANTVILLE NY 10570
10580, 81	RYE NY 10580
10940, 41, 43	MIDDLETOWN NY 10940
10951, 52	MONSEY NY 10952
10994, 95	WEST NYACK NY 10994
10996, 97	WEST POINT NY 10996
11001, 02, 04, 05	FLORAL PARK NY 11001
11020-27	GREAT NECK NY 11022
11040-49	NEW HYDE PARK NY 11040
11050-56	PORT WASHINGTON NY 11050
11553, 55, 56	UNIONDALE NY 11553
11580-83	VALLEY STREAM NY 11580
11568, 90	WESTBURY NY 11590
11702, 03, 07	BABYLON NY 11702

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
11776, 77	PORT JEFFERSON NY 11776
12180-83	TROY NY 12180
12550-53	NEWBURGH NY 12550
12601, 02	POUGHKEEPSIE NY 12601
12603, 04	ARLINGTON NY 12603
12801, 03, 04	GLENS FALLS NY 12801
12901, 03	PLATTSBURGH NY 12901
13021, 22	AUBURN NY 13021
13088-90	LIVERPOOL NY 13088
13440, 41	ROME NY 13440
14301-05	NIAGARA FALLS NY 14301
14850-53, 82	ITHACA NY 14850
17001, 11	CAMP HILL PA 17011
17042, 46	LEBANON PA 17042
17701, 03	WILLIAMSPORT PA 17701
18015-18	BETHLEHEM PA 18015
18040, 42-45	EASTON PA 18042
18504, 08, 12, 17-19	SCRANTON PA 18504
18501, 03, 05, 07, 09, 10, 15	SCRANTON PA 18505
18640-44	PITTSTON PA 18640
18701, 02	WILKES BARRE PA 18701
18704, 08, 09	WILKES BARRE PA 18704
18705-07	WILKES BARRE PA 18705
18954, 66	SOUTHHAMPTON PA 18966
19013-16, 22	CHESTER PA 19013
19020, 21	BENSALEM PA 19020
19025, 34	FORT WASHINGTON PA 19025
19043, 98	HOLMES PA 19043
19047-49, 53	LANGHORNE PA 19047
19054-59	LEVITTOWN PA 19054
19037, 63-65, 86, 91	MEDIA PA 19063
19080, 87-89	WAYNE PA 19080
19082-84	UPPER DARBY PA 19082
19301, 12, 33	PAOLI PA 19301
19380-83	WEST CHESTER PA 19380
19401, 04	NORRISTOWN PA 19401
19403, 07-09	EAGLEVILLE PA 19403
19405, 06	KING OF PRUSSIA PA 19406
19464, 65	POTTSTOWN PA 19464
19702, 11-18, 25, 26	NEWARK DE 19711
20110-12	MANASSAS VA 20110
20120, 21	CENTERVILLE VA 20120
20186, 87	WARRENTON VA 20186
20703-06, 37, 38, 40, 41, 81-85, 87-89	CALVERT DDC MD 20782
22191-94	WOODBRIDGE VA 22191
22401-08, 12	FREDERICKSBURG VA 22401
22554, 55	STAFFORD VA 22554
22801, 07	HARRISONBURG VA 22801
22901-11	CHARLOTTESVILLE VA 22901
23058-60	GLEN ALLEN VA 23060
23111, 16	MECHANICSVILLE VA 23111
23112, 13	MIDLOTHIAN VA 23112
23185-87	WILLIAMSBURG VA 23185
23229, 55, 94	RICHMOND VA 23229
23233, 38, 42	RICHMOND VA 23233

Column A ZIP Codes	Column B Label to
23234, 37	RICHMOND VA 23234
23235, 36	RICHMOND VA 23235
23430, 31	SMITHFIELD VA 23430
23432-39	SUFFOLK VA 23434
23690-93	GRAFTON VA 23692
23801, 03-06	PETERSBURG VA 23801
23832, 38	CHESTERFIELD VA 23832
23901, 09, 43	FARMVILLE VA 23901
24001-10	ROANOKE VA 24001
24011, 13, 16	ROANOKE VA 24011
24012, 14, 15, 17-19	ROANOKE VA 24012
24022-49	ROANOKE VA 24022
24060-63	BLACKSBURG VA 24060
24068, 73	CHRISTIANSBURG VA 24068
24112-15	MARTINSVILLE VA 24112
24141-43	RADFORD VA 24141
24401, 02	STAUNTON VA 24401
24505-22, 24-39, 44-50, 52-71, 73-91, 93-99	LYNCHBURG VA 24505
24540-43	DANVILLE VA 24541
25301, 11	CHARLESTON WV 25301
25302, 12	CHARLESTON WV 25302
25303, 09	CHARLESTON WV 25303
25304, 15	CHARLESTON WV 25304
25701, 03-05, 71-79	HUNTINGTON WV 25701
25706-29	HUNTINGTON WV 25706
26101-06	PARKERSBURG WV 26101
26301, 02	CLARKSBURG WV 26301
26502-07	MORGANTOWN WV 26505
26554, 55	FAIRMONT WV 26554
27101, 11, 12, 15	WINSTON SALEM NC 27101
27104, 14	WINSTON SALEM NC 27104
27106, 16	WINSTON SALEM NC 27106
27107, 17, 27	WINSTON SALEM NC 27107
27203, 04	ASHEBORO NC 27203
27215-17, 20	BURLINGTON NC 27215
27260-65	HIGH POINT NC 27260
27284, 85	KERNERSVILLE NC 27284
27288, 89	EDEN NC 27288
27292-95	LEXINGTON NC 27292
27320-23	REIDSVILLE NC 27320
27330, 31	SANFORD NC 27330
27360, 61	THOMASVILLE NC 27360
27401-03, 11, 20, 35, 55	GREENSBORO NC 27401
27404, 12-14, 17-19, 21-34, 36-54, 56-99	GREENSBORO NC 27404
27405, 15	GREENSBORO NC 27405
27406, 16	GREENSBORO NC 27406
27408, 09, 10	GREENSBORO NC 27408
27511-13, 19	CARY NC 27511
27514-16, 99	CHAPEL HILL NC 27514
27530-34	GOLDSBORO NC 27530
27587, 88	WAKE FOREST NC 27587
27604, 16	RALEIGH NC 27604
27608, 09	RALEIGH NC 27609
27603, 10	RALEIGH NC 27610
27612, 13	RALEIGH NC 27612

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Column A ZIP Codes	Column B Label to
27614, 15	RALEIGH NC 27615
27701, 03	DURHAM NC 27701
27705, 15	DURHAM NC 27705
27707, 13, 17	DURHAM NC 27707
27709, 11	DURHAM NC 27709
27712, 22	DURHAM NC 27712
27801-04	ROCKY MOUNT NC 27801
27833-36, 58	GREENVILLE NC 27833
27893-96	WILSON NC 27893
27906-09	ELIZABETH CITY NC 27909
28001, 02	ALBEMARLE NC 28001
28025, 26	CONCORD NC 28025
28052, 53	GASTONIA NC 28052
28054-56	GASTONIA NC 28054
28070, 78	HUNTERSVILLE NC 28078
28081-83	KANNAPOLIS NC 28081
28092, 93	LINCOLNTON NC 28092
28104-06	MATTHEWS NC 28105
28110-12	MONROE NC 28110
28144-47	SALISBURY NC 28144
28150-52	SHELBY NC 28150
28301-14	FAYETTEVILLE NC 28301
28328, 29	CLINTON NC 28328
28334, 35	DUNN NC 28334
28352, 53	LAURINBURG NC 28352
28358-60	LUMBERTON NC 28358
28370-74	PINEHURST NC 28370
28387, 88	SOUTHERN PINES NC 28387
28401-12	WILMINGTON NC 28401
28459, 67-70	SHALLOTTE NC 28459
28461, 65	SOUTHPORT NC 28461
28501-04	KINSTON NC 28501
28540-47	JACKSONVILLE NC 28540
28560-64	NEW BERN NC 28560
28601-03	HICKORY NC 28601
28607, 08	BOONE NC 28607
28633, 45	LENOIR NC 28645
28655, 80	MORGANTON NC 28655
28625, 77, 87	STATESVILLE NC 28677
28734, 44	FRANKLIN NC 28734
28739, 91-93	HENDERSONVILLE NC 28739
28738, 85, 86	WAYNESVILLE NC 28786
28801, 06, 16	ASHEVILLE NC 28801
28803, 05	ASHEVILLE NC 28803
28804, 14	ASHEVILLE NC 28804
29071-73	LEXINGTON SC 29072
29115-18	ORANGEBURG SC 29115
29150-54	SUMTER SC 29150
29169-72	WEST COLUMBIA SC 29169
29301-03, 06, 07	SPARTANBURG SC 29301
29304, 05, 08-19	SPARTANBURG SC 29304
29340-42	GAFFNEY SC 29340
29526-28	CONWAY SC 29526
29532, 40	DARLINGTON SC 29532
29550, 51	HARTSVILLE SC 29550
29572, 75, 77, 78, 87	MYRTLE BEACH SC 29577
29582, 97, 98	N MYRTLE BEACH SC 29582

Column A ZIP Codes	Column B Label to
29601, 05, 09	GREENVILLE SC 29601
29602, 13, 14, 18, 19	GREENVILLE SC 29602
29603, 04, 08, 12	GREENVILLE SC 29603
29606, 07	GREENVILLE SC 29606
29610, 11, 17	GREENVILLE SC 29610
29615, 16	GREENVILLE SC 29615
29621-26	ANDERSON SC 29621
29631-34	CLEMSON SC 29631
29640-42	EASLEY SC 29640
29646-49	GREENWOOD SC 29646
29650-52	GREER SC 29650
29672, 78, 79	SENECA SC 29672
29680, 81	SIMPSONVILLE SC 29680
29715, 16	FORT MILL SC 29715
29720, 21	LANCASTER SC 29720
29730, 31, 33, 34	ROCK HILL SC 29730
29901-04, 06	BEAUFORT SC 29901
30004, 09	ALPHARETTA GA 30004
30005, 22	ALPHARETTA GA 30005
30012, 13, 94	CONYERS GA 30012
30030, 31, 33, 89	DECATUR GA 30030
30034-37	DECATUR GA 30034
30038, 58	LITHONIA GA 30038
30028, 40, 41	CUMMING GA 30040
30043, 46	LAWRENCEVILLE GA 30043
30042, 44, 45	LAWRENCEVILLE GA 30044
30047, 48	LILBURN GA 30047
30008, 60	MARIETTA GA 30060
30071, 93	NORCROSS GA 30071
30075, 77	ROSWELL GA 30075
30080-82	SMYRNA GA 30080
30083, 86, 88	STONE MOUNTAIN GA 30083
30084, 85	TUCKER GA 30084
30010, 92	NORCROSS GA 30092
30101, 02	ACWORTH GA 30101
30120, 21	CARTERSVILLE GA 30120
30188, 89	WOODSTOCK GA 30188
30701, 03	CALHOUN GA 30701
30719-22	DALTON GA 30720
31201, 11, 17	MACON GA 31201
31206, 16	MACON GA 31206
31210, 20	MACON GA 31210
31310, 13-15	HINESVILLE GA 31310
31401, 15	SAVANNAH GA 31401
31403, 05	SAVANNAH GA 31403
31404, 14	SAVANNAH GA 31404
31406, 11, 16	SAVANNAH GA 31406
31407, 08, 18	SAVANNAH GA 31407
31419, 20	SAVANNAH GA 31419
31701, 05	ALBANY GA 31701
31702, 03, 06, 08	ALBANY GA 31702
31709, 68, 92, 94	AMERICUS GA 31709
31901, 02	COLUMBUS GA 31901
31903, 05	COLUMBUS GA 31903
32034, 35	FERNANDINA BEACH FL 32034
32024, 25, 55, 56	LAKE CITY FL 32055
32060, 64	LIVE OAK FL 32060

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Column A ZIP Codes	Column B Label to
32050, 68	MIDDLEBURG FL 32068
32065, 67, 73	ORANGE PARK FL 32073
32084-86, 92, 95	SAINT AUGUSTINE FL 32084
32041, 97	YULEE FL 32097
32205, 20, 21, 36, 54	JACKSONVILLE FL 32205
32207, 47	JACKSONVILLE FL 32207
32208, 19	JACKSONVILLE FL 32208
32210, 38	JACKSONVILLE FL 32210
32211, 39, 77	JACKSONVILLE FL 32211
32216, 45, 46	JACKSONVILLE FL 32216
32217, 23, 37, 41, 57, 59	JACKSONVILLE FL 32217
32218, 26	JACKSONVILLE FL 32218
32225, 35	JACKSONVILLE FL 32225
32224, 40, 50	JACKSONVILLE FL 32250
32256, 58	JACKSONVILLE FL 32256
32301, 11	TALLAHASSEE FL 32301
32303, 15	TALLAHASSEE FL 32303
32304, 10, 16	TALLAHASSEE FL 32304
32308, 17	TALLAHASSEE FL 32308
32401, 02	PANAMA CITY FL 32401
32403, 04	PANAMA CITY FL 32404
32405, 06, 09	PANAMA CITY FL 32405
32407, 08, 13, 17	PANAMA CITY FL 32407
32502, 73-76, 89-98	PENSACOLA FL 32502
32501, 03, 13	PENSACOLA FL 32503
32504, 14, 24, 34	PENSACOLA FL 32504
32506, 16, 26	PENSACOLA FL 32506
32507, 08	PENSACOLA FL 32507
32522, 23	PENSACOLA FL 32522
32536, 38, 39	CRESTVIEW FL 32536
32540, 41	DESTIN FL 32540
32547-49	FT WALTON BEACH FL 32547
32561, 62, 66	GULF BREEZE FL 32561
32544, 69	MARY ESTHER FL 32569
32570-72, 83	MILTON FL 32570
32578, 88	NICEVILLE FL 32578
32615, 16	ALACHUA FL 32615
32626, 44	CHIEFLAND FL 32626
32643, 55	HIGH SPRINGS FL 32643
32701, 15	ALTAMONTE SPRINGS FL 32701
32707, 18, 30	CASSLEBERRY FL 32707
32708, 19	WINTER SPRINGS FL 32708
32703, 04, 12	APOPKA FL 32712
32714, 16	ALTAMONTE SPRINGS FL 32714
32720-24	DELAND FL 32720
32725, 28	DELTONA FL 32725
32726, 27, 36	EUSTIS FL 32726
32738, 39	DELTONA FL 32738
32746, 95	LAKE MARY FL 32746
32750, 52	LONGWOOD FL 32750
32751, 94	MAITLAND FL 32751
32756, 57	MT DORA FL 32757
32763, 74	ORANGE CITY FL 32763
32762, 65, 66	OVIEDO FL 32765
32771-73	SANFORD FL 32771
32779, 91	LONGWOOD FL 32779
32780-83, 96	TITUSVILLE FL 32780

Column A ZIP Codes	Column B Label to
32789, 90	WINTER PARK FL 32789
32801, 02	ORLANDO FL 32801
32804, 54	ORLANDO FL 32804
32805, 55	ORLANDO FL 32805
32806, 56	ORLANDO FL 32806
32807, 57	ORLANDO FL 32807
32808, 18, 68	ORLANDO FL 32808
32809, 39, 59	ORLANDO FL 32809
32810, 60	ORLANDO FL 32810
32811, 35, 61	ORLANDO FL 32811
32812, 27, 32	ORLANDO FL 32812
32817, 67	ORLANDO FL 32817
32819, 21, 36, 69	ORLANDO FL 32819
32820, 26, 28, 29, 31, 33, 34, 78	ORLANDO FL 32820
32824, 37, 77	ORLANDO FL 32824
32901, 02, 19	MELBOURNE FL 32901
32904, 12	WEST MELBOURNE FL 32904
32905, 06	PALM BAY FL 32905
32907-09, 11	PALM BAY WEST FL 32907
32922-24, 26, 27	COCOA FL 32922
32925, 37	PATRICK AFB FL 32925
32931, 32	COCOA BEACH FL 32931
32934, 40, 41	EAU GALLIE FL 32934
32952-54	MERRITT ISLAND FL 32952
32955, 56	ROCKLEDGE FL 32955
32958, 76, 78	SEBASTIAN FL 32958
32960, 63	VERO BEACH FL 32960
32962, 65, 68	VERO BEACH FL 32962
32966, 67, 69	VERO BEACH FL 32966
33008, 09	HALLANDALE FL 33009
33010, 11	HIALEAH FL 33010
33015, 17	SOUTH FLORIDA FL 33015
33002, 18	SOUTH FLORIDA FL 33018
33019, 20, 22	SOUTH FLORIDA FL 33020
33021, 81	SOUTH FLORIDA FL 33021
33023, 83	SOUTH FLORIDA FL 33023
33024, 84	SOUTH FLORIDA FL 33024
33030, 33, 90	HOMESTEAD FL 33030
33031, 32, 39, 92	SOUTH FLORIDA 33032
33034, 35	HOMESTEAD FL 33034
33040, 41, 45	KEY WEST FL 33040
33055, 56	SOUTH FLORIDA FL 33055
33060, 69	SOUTH FLORIDA FL 33060
33061, 62, 72	SOUTH FLORIDA FL 33061
33063, 93	SOUTH FLORIDA FL 33063
33065, 75	SOUTH FLORIDA FL 33065
33067, 73, 76, 97	SOUTH FLORIDA FL 33067
33071, 77	SOUTH FLORIDA FL 33071
33128, 32, 36	MIAMI FL 33128
33129, 30	MIAMI FL 33129
33127, 37	MIAMI FL 33137
33109, 39	MIAMI FL 33139
33167, 68	MIAMI FL 33167
33174, 84	MIAMI FL 33174
33175, 85	MIAMI FL 33175
33186, 96	MIAMI FL 33186

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Column A ZIP Codes	Column B Label to
33301, 94	FT LAUDERDALE FL 33301
33324, 88	FT LAUDERDALE FL 33324
33404, 19	WEST PALM BEACH FL 33404
33407, 12	WEST PALM BEACH FL 33407
33411, 21	WEST PALM BEACH FL 33411
33413, 15	WEST PALM BEACH FL 33413
33417, 22	WEST PALM BEACH FL 33417
33424, 25, 74	BOYNTON BEACH FL 33424
33427, 29, 81	BOCA RATON FL 33427
33428, 97	BOCA RATON FL 33428
33441, 43	DEERFIELD BEACH FL 33441
33444, 47	DELRAY BEACH FL 33444
33445, 82	DELRAY BEACH FL 33445
33446, 48, 84	DELRAY BEACH FL 33446
33455, 75	HOBE SOUND FL 33455
33461, 66	LAKE WORTH FL 33461
33462, 65	LAKE WORTH FL 33462
33454, 63	LAKE WORTH FL 33463
33468, 77, 78	JUPITER FL 33468
33509, 11	BRANDON FL 33511
33523, 25, 26	DADE CITY FL 33525
33539-41, 43, 44	ZEPHYRHILLS FL 33540
33548, 49	LUTZ FL 33549
33564-67	PLANT CITY FL 33566
33568, 69	RIVERVIEW FL 33569
33570, 72, 73	RUSKIN FL 33570
33583, 84	SEFFNER FL 33584
33594, 95	VALRICO FL 33594
33602, 72	TAMPA FL 33602
33603, 73	TAMPA FL 33603
33604, 74	TAMPA FL 33604
33605, 75	TAMPA FL 33605
33610, 80	TAMPA FL 33610
33611, 81	TAMPA FL 33611
33612, 82	TAMPA FL 33612
33614, 84	TAMPA FL 33614
33615, 85	TAMPA FL 33615
33616, 86	TAMPA FL 33616
33618, 25, 88	TAMPA FL 33618
33624, 26	TAMPA FL 33624
33637, 87	TAMPA FL 33637
33701, 31	ST PETERSBURG FL 33701
33702, 16, 42	ST PETERSBURG FL 33702
33703, 32	ST PETERSBURG FL 33703
33704, 34	ST PETERSBURG FL 33704
33705, 12, 15, 39	ST PETERSBURG FL 33705
33706, 36, 40, 41	ST PETERSBURG FL 33706
33707, 11, 37, 47	ST PETERSBURG FL 33707
33708, 38	ST PETERSBURG FL 33708
33709, 10, 43	ST.PETERSBURG FL 33709
33713, 14, 84	ST PETERSBURG FL 33713
33730, 33	ST PETERSBURG FL 33730
33755, 57, 69	CLEARWATER FL 33755
33759, 60, 62, 64	CLEARWATER FL 33762
33761, 63, 65	CLEARWATER FL 33765
33770, 71, 74, 79	LARGO FL 33770
33772, 73, 75-78	SEMINOLE FL 33772

Column A ZIP Codes	Column B Label to
33780-82	PINELLAS PARK FL 33781
33785, 86	INDIAN ROCKS BEACH FL 33785
33801-03, 15	LAKELAND FL 33801
33805, 09, 10	LAKELAND FL 33805
33807, 11, 13	LAKELAND FL 33813
33830, 31	BARTOW FL 33830
33844, 45	HAINES CITY FL 33844
33853-56, 59, 67	LAKE WALES FL 33853
33870-72	SEBRING FL 33870
33880, 82, 83	WINTER HAVEN FL 33880
33881, 84, 85	LAKELAND FL 33881
33901, 16	FT MYERS FL 33901
33903, 17	FT MYERS FL 33903
33905, 94	FT MYERS FL 33905
33909, 93	CAPE CORAL FL 33909
33912, 13	FT MYERS FL 33912
33914, 91	CAPE CORAL FL 33914
33931, 32	FT MYERS BEACH FL 33931
33935, 75	LABELLE FL 33935
33936, 70-72	LEHIGH ACRES FL 33936
33948, 53, 81	PT CHARLOTTE FL 33948
33950, 55, 82	PUNTA GORDA FL 33950
33952, 54	PT CHARLOTTE FL 33952
33980, 83	PUNTA GORDA FL 33980
34104, 09	NAPLES FL 34104
34105, 10	NAPLES FL 34105
34112, 13	NAPLES FL 34112
34116, 17, 19, 20	NAPLES FL 34116
34134, 35	BONITA SPRINGS FL 34134
34142, 43	IMMOKALEE FL 34142
34201-04	BRADENTON FL 34203
34205, 06, 08	BRADENTON FL 34206
34207, 10, 81, 82	BRADENTON FL 34207
34209, 80	BRADENTON FL 34209
34217, 18	BRADENTON BEACH FL 34217
34220, 21	PALMETTO FL 34220
34223, 24, 95	ENGLEWOOD FL 34223
34230, 34-37, 43	SARASOTA FL 34230
34231, 38, 41, 42, 76	SARASOTA FL 34231
34232, 33, 40	SARASOTA FL 34232
34239, 77	SARASOTA FL 34239
34265, 66	ARCADIA FL 34265
34274, 75	NOKOMIS FL 34274
34284, 85, 92	VENICE FL 34285
34286, 87	NORTH PORT FL 34287
34420, 21	BELLVIEW FL 34420
34423, 28, 29	CRYSTAL RIVER FL 34428
34430-34	DUNNELLON FL 34430
34446-48	HOMOSASSA SPRINGS FL 34446
34450-53	INVERNESS FL 34450
34460, 61	LECANTO FL 34460
34464, 65	BEVERLY HILLS FL 34464
34470, 75, 78, 79	OCALA FL 34470
34471, 72, 80, 83	OCALA FL 34471
34473, 74, 76, 77, 81, 82	OCALA FL 34473
34488, 89	SILVER SPRINGS FL 34488
34491, 92	SUMMERFIELD FL 34491

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Column A ZIP Codes	Column B Label to
34601-05, 13, 14	BROOKSVILLE FL 34601
34606-09, 11	SPRING HILL FL 34606
34652-56	NEW PORT RICHEY FL 34652
34667, 69, 74	HUDSON FL 34667
34668, 73	PORT RICHEY FL 34668
34682-85	PALM HARBOR FL 34683
34688, 89	TARPON SPRINGS FL 34689
34697, 98	DUNEDIN FL 34698
34711, 12	CLERMONT FL 34711
34741, 42, 46, 47	KISSIMMEE FL 34741
34743-45, 58, 59	KISSIMMEE FL 34743
34748, 49, 88, 89	LEESBURG FL 34748
34769-73	ST CLOUD FL 34769
34777, 78, 87	WINTER GARDEN FL 34777
34945, 81, 82, 86-88	FT PIERCE FL 34945
34946, 47, 49, 51	FT PIERCE FL 34946
34948, 54, 79, 85	FT PIERCE FL 34948
34957, 58	JENSEN BEACH FL 34957
34972-74	OKEECHOBEE FL 34972
34990, 91	PALM CITY FL 34990
35010, 11	ALEXANDER CITY AL 35010
35045, 46	CLANTON AL 35045
35150, 51	SYLACAUGA AL 35150
35160, 61	TALLADEGA AL 35160
35475, 76	NORTHPORT AL 35476
35501-04	JASPER AL 35501
35956, 57	BOAZ AL 35957
36027, 72	EUFAULA AL 36027
36066-68	PRATTVILLE AL 36067
36079, 81, 82	TROY AL 36081
36092, 93	WETUMPKA AL 36092
36330, 31	ENTERPRISE AL 36330
36360, 61	OZARK AL 36360
36426, 27	BREWTON AL 36426
36460, 61	MONROEVILLE AL 36460
36701-03	SELMA AL 36701
36801-04	OPELIKA AL 36801
36830-32, 49	AUBURN AL 36830
36867-70	PHENIX CITY AL 36867
37011, 13	ANTIOCH TN 37011
37024, 27	BRENTWOOD TN 37024
37040, 41	CLARKSVILLE TN 37040
37055, 56	DICKSON TN 37055
37064, 65, 67-69	FRANKLIN TN 37064
37070, 72	GOODLETTSVILLE TN 37070
37075, 77	HENDERSONVILLE TN 37075
37087, 88, 90	LEBANON TN 37087
37110, 11	MCMINNVILLE TN 37110
37115, 16	MADISON TN 37115
37121, 22	MT JULIET TN 37121
37127, 30, 33	MURFREESBORO TN 37127
37128, 29	MURFREESBORO TN 37128
37160-62	SHELBYVILLE TN 37160
37201, 19	NASHVILLE TN 37201
37204, 20	NASHVILLE TN 37204
37206, 13	NASHVILLE TN 37206
37208, 18, 28	NASHVILLE TN 37208

Column A ZIP Codes	Column B Label to
37210, 24	NASHVILLE TN 37210
37211, 22	NASHVILLE TN 37211
37229, 30	NASHVILLE TN 37229
37303, 71	ATHENS TN 37303
37311, 12, 20, 64	CLEVELAND TN 37311
37317, 46	COPPERHILL TN 37317
37349, 55	MANCHESTER TN 37355
37304, 73	SALE CREEK TN 37373
37319, 79, 84	SODDY DAISY TN 37379
37337, 81, 95	SPRING CITY TN 37381
37358, 85	TELLICO PLAINS TN 37385
37402, 03, 08, 50, 99	CHATTANOOGA TN 37402
37409, 10, 19	CHATTANOOGA TN 37409
37411, 14	CHATTANOOGA TN 37411
37601, 05	JOHNSON CITY TN 37601
37602, 04	JOHNSON CITY TN 37604
37616, 41	CHUCKEY TN 37641
37642, 45	CHURCH HILL TN 37642
37643, 44	ELIZABETHTON TN 37643
37660, 62, 65	KINGSPORT TN 37660
37716, 17	CLINTON TN 37716
37743-45	GREENEVILLE TN 37743
37771, 72	LENOIR CITY TN 37771
37801-04	MARYVILLE TN 37801
37813-16	MORRISTOWN TN 37814
37821, 22	NEWPORT TN 37821
37824, 25, 79	NEW TAZWELL TN 37825
37830, 31	OAK RIDGE TN 37830
37862-64, 68, 76	SEVIERVILLE TN 37862
37902, 16, 29, 99	KNOXVILLE TN 37902
37914, 24	KNOXVILLE TN 37914
37917, 27	KNOXVILLE TN 37917
37918, 28, 38	KNOXVILLE TN 37918
37919, 39	KNOXVILLE TN 37919
37920, 40, 98	KNOXVILLE TN 37920
37923, 32	KNOXVILLE TN 37923
37950, 90, 95, 97	KNOXVILLE TN 37950
38017, 27	COLLIERVILLE TN 38017
38018, 88	CORDOVA TN 38018
38024, 25	DYERSBURG TN 38024
38053-55	MILLINGTON TN 38053
38101, 40, 42, 43, 45, 47, 48, 50, 51, 59, 61, 66, 69, 94, 97	MEMPHIS TN 38101
38103, 05, 46, 63, 65, 73	MEMPHIS TN 38103
38104, 74	MEMPHIS TN 38104
38106, 26, 36	MEMPHIS TN 38106
38108, 12	MEMPHIS TN 38108
38109, 90	MEMPHIS TN 38109
38111, 52	MEMPHIS TN 38111
38115, 75, 88, 93	MEMPHIS TN 38115
38116, 31, 32, 86	MEMPHIS TN 38116
38117, 37, 57, 77	MEMPHIS TN 38117
38118, 81	MEMPHIS TN 38118
38119, 20, 87	MEMPHIS TN 38119
38125, 41	MEMPHIS TN 38125
38127, 67	MEMPHIS TN 38127

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
38128, 68	MEMPHIS TN 38128
38133, 35	MEMPHIS TN 38133
38134, 84	MEMPHIS TN 38134
38138, 39, 83	MEMPHIS TN 38138
38301, 02, 08	JACKSON TN 38301
38303, 05, 14	JACKSON TN 38305
38501-03, 05, 06	COOKEVILLE TN 38501
38555, 57, 58	CROSSVILLE TN 38555
38634, 35	HOLLY SPRINGS MS 38634
38701-05	GREENVILLE MS 38701
38801-03	TUPELO MS 38801
38901, 02	GRENADA MS 38901
38930, 35	GREENWOOD MS 38930
39042, 43	BRANDON MS 39042
39056, 58, 60	CLINTON MS 39056
39110, 30	MADISON MS 39110
39120-22	NATCHEZ MS 39120
39157, 58	RIDGELAND MS 39157
39180-83	VICKSBURG MS 39180
39201, 02	JACKSON MS 39201
39204, 84	JACKSON MS 39204
39206, 86	JACKSON MS 39206
39208, 18, 88	JACKSON MS 39208
39209, 89	JACKSON MS 39209
39212, 72, 82	JACKSON MS 39212
39213, 83	JACKSON MS 39213
39401-07	HATTIESBURG MS 39401
39440-43	LAUREL MS 39440
39520-22, 29	BAY ST LOUIS MS 39520
39564-66	OCEAN SPRINGS MS 39564
39601-03	BROOKHAVEN MS 39601
39648, 49	MC COMB MS 39648
39701-05, 10	COLUMBUS MS 39701
39759, 60	STARKVILLE MS 39759
40201-04, 08, 10, 70	LOUISVILLE KY 40202
40206, 07, 57, 80	LOUISVILLE KY 40207
40211, 12, 51	LOUISVILLE KY 40211
40205, 13, 18	LOUISVILLE KY 40213
40209, 14	LOUISVILLE KY 40214
40216, 56	LOUISVILLE KY 40216
40219, 29, 59	LOUISVILLE KY 40219
40220, 50	LOUISVILLE KY 40220
40222, 41, 42, 52	LOUISVILLE KY 40222
40231, 32, 33, 90, 92, 94, 96-98	LOUISVILLE KY 40232
40223, 43, 53	LOUISVILLE KY 40243
40258, 66, 68, 81, 83, 84	LOUISVILLE KY 40258
40269, 99	LOUISVILLE KY 40299
40502, 17	LEXINGTON KY 40502
40503, 14	LEXINGTON KY 40503
40504, 10, 13	LEXINGTON KY 40504
40505, 09, 16	LEXINGTON KY 40505
40506, 26, 36, 46	LEXINGTON KY 40506
40507, 08	LEXINGTON KY 40507
40511, 15	LEXINGTON KY 40511
40601-04	FRANKFORT KY 40601
40701, 02	CORBIN KY 40701

Column A ZIP Codes	Column B Label to
40741-45	LONDON KY 40741
41011-19	COVINGTON KY 41011
41071-74	NEWPORT KY 41071
41075, 76	NEWPORT KY 41075
41101, 02, 05, 14	ASHLAND KY 41101
41301, 42	CAMPTON KY 41301
41501, 02	PIKEVILLE KY 41501
41701, 02	HAZARD KY 41701
42001, 03	PADUCAH KY 42001
42101, 04, 22	BOWLING GREEN KY 42101
42419, 20	HENDERSON KY 42420
42501-03	SOMERSET KY 42501
42701, 02	ELIZABETHTOWN KY 42701
43016, 17	DUBLIN OH 43016
43040, 41	MARYSVILLE OH 43040
43055, 56, 58, 93	NEWARK OH 43055
43007, 67	RAYMOND OH 43067
43081, 82, 86	WESTERVILLE OH 43081
43135, 52, 56	LAURELVILLE OH 43135
43150, 63	RUSHVILLE OH 43150
43206, 17	COLUMBUS OH 43206
43222, 23	COLUMBUS OH 43222
43234, 35, 40	COLUMBUS OH 43234
43301, 02	MARION OH 43301
43314, 35	CALEDONIA OH 43314
43330, 59	WHARTON OH 43359
43701, 02, 21	ZANESVILLE OH 43702
43725, 50	CAMBRIDGE OH 43725
43754, 86	LEWISVILLE OH 43754
43736, 73	QUAKER CITY OH 43773
43803, 40	STONE CREEK OH 43840
44221, 22	CUYAHOGA FALLS OH 44221
44240, 41	KENT OH 44240
44256-58	MEDINA OH 44256
44281, 82	WADSWORTH OH 44281
44646, 47	MASSILLON OH 44646
45011, 12, 20-26	HAMILTON OH 45011
45014, 18	FAIRFIELD OH 45014
45042-44	MIDDLETOWN OH 45042
45202, 10	CINCINNATI OH 45202
45203, 04, 14	CINCINNATI OH 45203
45206, 26	CINCINNATI OH 45206
45207, 12	CINCINNATI OH 45212
45216, 17, 32	CINCINNATI OH 45217
45219, 20	CINCINNATI OH 45219
45223, 25	CINCINNATI OH 45223
45209, 27	CINCINNATI OH 45227
45228, 30	CINCINNATI OH 45230
45213, 36	CINCINNATI OH 45236
45233, 38	CINCINNATI OH 45238
45218, 40, 46	CINCINNATI OH 45240
45244, 45	CINCINNATI OH 45245
45239, 47, 51-53	CINCINNATI OH 45251
45502-04	SPRINGFIELD OH 45502
45505, 06	SPRINGFIELD OH 45505
45613, 83	BEAVER OH 45613
45622, 54	NEW PLYMOUTH OH 45654

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Column A ZIP Codes	Column B Label to
45662, 63	PORTSMOUTH OH 45662
45710, 76	ALBANY OH 45710
45711, 77	AMESVILLE OH 45711
45712, 29	BARLOW OH 45712
45715, 21	BEVERLY OH 45715
45717, 64	NELSONVILLE OH 45764
45734, 67, 89	NEW MATAMORAS OH 45767
45786, 87	WARTERFORD OH 45786
46011, 14-16, 18	ANDERSON IN 46011
46012, 13, 17	ANDERSON IN 46012
46032, 33	CARMEL IN 46032
46142, 43	GREENWOOD IN 46142
46202, 23, 25	INDIANAPOLIS IN 46202
46204, 82, 44	INDIANAPOLIS IN 46204
46205, 20, 30	INDIANAPOLIS IN 46205
46206, 07, 83, 85, 98	INDIANAPOLIS IN 46206
46214, 53, 54	INDIANAPOLIS IN 46214
46217, 27, 37, 47	INDIANAPOLIS IN 46217
46221, 31	INDIANAPOLIS IN 46221
46235, 36	INDIANAPOLIS IN 46236
46239, 59	INDIANAPLOIS IN 46239
46240, 60, 80, 90	INDIANAPOLIS IN 46240
46241, 42, 51	INDIANAPOLIS IN 46241
46250, 56	INDIANAPOLIS IN 46250
46268, 78	INDIANAPOLIS IN 46268
46307, 08	CROWN POINT IN 46307
46320, 25, 27	HAMMOND IN 46320
46350, 52	LA PORTE IN 46350
46360, 61	MICHIGAN CITY IN 46360
46408, 09	GARY IN 46408
46410, 11	MERRILLVILLE IN 46410
46514-17	ELKHART IN 46514
46544-46	MISHAWAKA IN 46544
46601, 17, 24, 34	SOUTH BEND IN 46601
46613, 14, 80	SOUTH BEND IN 46613
46615, 35, 37, 60	SOUTH BEND IN 46615
46616, 19, 28	SOUTH BEND IN 46616
46901-04	KOKOMO IN 46901
46952, 53	MARION IN 46952
47129-32	JEFFERSONVILLE IN 47130
47150, 51	NEW ALBANY IN 47150
47629, 30	NEWBURGH IN 47630
47670, 71	PRINCETON IN 47670
47701-06, 21, 22, 27, 30-37, 39-41, 44, 47, 50	EVANSVILLE IN 47701
47708, 13	EVANSVILLE IN 47708
47711, 24	EVANSVILLE IN 47711
47712, 19, 20	EVANSVILLE IN 47712
47714, 28	EVANSVILLE IN 47714
47715, 16	EVANSVILLE IN 47715
47801-08	TERRE HAUTE IN 47801
48001, 28	ALGONAC MI 48001
48009, 12	BIRMINGHAM MI 48009
48025, 34, 37, 75, 76, 86	SOUTHFIELD MI 48025
48026, 66	FRASER MI 48026
48035, 36, 43, 45, 46	CLINTON TOWNSHIP MI 48035
48038, 42, 44	CLINTON TOWNSHIP MI 48038

Column A ZIP Codes	Column B Label to
48040, 49, 59-61, 74	MARYSVILLE 48040
48047, 51	NEW BALTIMORE MI 48047
48062-64	RICHMOND MI 48062
48065, 96	ROMEO MI 48065
48067-70, 72, 73	ROYAL OAK MI 48067
48080-82	SAINT CLAIR SHS MI 48080
48007, 83, 84, 98, 99	TROY MI 48083
48015, 89-93	WARREN MI 48089
48094, 95	WASHINGTON MI 48094
48302, 04	BLOOMFIELD CR MI 48302
48306-09	ROCHESTER HILLS MI 48306
48310-14	STERLING HTS MI 48310
48315-18	SHELBY TWP MI 48315
48320, 28, 40-43	KEEGO HARBOR MI 48320
48321, 26	AUBURN HTS MI 48321
48322-25	WEST BLOOMFIELD MI 48322
48327, 29, 83, 86	WATERFORD ANNEX MI 48327
48331, 33, 34	FARMINGTON HILLS MI 48331
48332, 35, 36	FARMINGTON MI 48332
48346-48	CLARKSTON MI 48346
48356, 57	HIGHLAND MI 48356
48359-63	LAKE ORION MI 48359
48370, 71	OXFORD MI 48370
48374, 77	NOVI CR ANNEX MI 48374
48375, 76	NOVI MI 48375
48380-82	MILFORD MI 48380
48390, 91	WALLED LAKE MI 48390
49002, 24	PORTAGE MI 49002
49003-05, 19, 81	KALAMAZOO MI 49003
49006, 07	KALAMAZOO MI 49006
49008, 09	KALAMAZOO MI 49008
49011, 21, 29, 32, 34, 41-43	ATHENS MI 49011
49013, 26, 30, 31, 40, 45, 51	BANGOR MI 49013
49014, 15, 17	BATTLE CREEK MI 49014
49016, 18	BATTLE CREEK MI 49016
49020, 25, 27, 33, 36, 50, 52, 62	BEDFORD MI 49020
49022, 23	BENTON HARBOR MI 49022
49055, 60, 64, 70, 82	GOBLES MI 49055
49056, 65, 67, 72, 88, 94, 95	GRAND JUNCTION MI 49056
49061, 63, 66, 74, 75, 77, 84	JONES MI 49061
49068, 69	MARSHALL MI 49068
49089, 92, 96, 98	SHERWOOD MI 49089
49102, 15	BEDFORD MI 49102
49103, 04	BERRIEN SPRINGS MI 49103
49101, 06	BANGOR MI 49106
49113, 25, 26, 28, 30	SHERWOOD MI 49113
49116, 19, 29	JONES MI 49116
49120, 21	NILES MI 49120
49504, 14, 44	GRAND RAPIDS MI 49504
49505, 15, 25	GRAND RAPIDS MI 49505
49506, 16	GRAND RAPIDS MI 49506
49507, 10	GRAND RAPIDS MI 49507

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Column A ZIP Codes	Column B Label to
49508, 18, 48	GRAND RAPIDS MI 49508
49801, 02	IRON MOUNTAIN MI 49801
50310, 94	DES MOINES IA 50310
50313, 33	DES MOINES IA 50313
50320, 21	DES MOINES IA 50320
50322, 23	DES MOINES IA 50322
50701-04, 06, 07	WATERLOO IA 50701
51101, 02, 05, 10, 11	SIOUX CITY IA 51101
51103, 09	SIOUX CITY IA 51103
51104, 08	SIOUX CITY IA 51104
51106, 07	SIOUX CITY IA 51106
51501-03	COUNCIL BLUFFS IA 51501
52401, 07	CEDAR RAPIDS IA 52401
52402, 11	CEDAR RAPIDS IA 52402
52408, 09	CEDAR RAPIDS IA 52408
53005, 08, 45	BROOKFIELD WI 53005
53022, 77	GERMANTOWN WI 53022
53051, 52	MENOMONEE FALLS WI 53051
53081-83	SHEBOYGAN WI 53081
53090, 95	WEST BEND WI 53090
53092, 97	MEQUON WI 53092
53094, 98	WATERTOWN WI 53094
53140-44	KENOSHA WI 53140
53146, 51	NEW BERLIN WI 53146
53186-89	WAUKESHA WI 53186
53202, 03, 50	MILWAUKEE WI 53202
53205, 33	MILWAUKEE WI 53205
53207, 35	MILWAUKEE WI 53207
53213, 26	MILWAUKEE WI 53213
53215, 19, 34	MILWAUKEE WI 53215
53220, 28	MILWAUKEE WI 53220
53222, 25	MILWAUKEE WI 53222
53223, 24	MILWAUKEE WI 53223
53401, 03, 07	RACINE WI 53401
53402, 04	RACINE WI 53404
53405, 06, 08	RACINE WI 53406
53545-47	JANESVILLE WI 53545
53704, 14, 16	MADISON WI 53704
53711, 17, 19, 44	MADISON WI 53711
53713, 15	MADISON WI 53713
54220, 21	MANITOWOC WI 54220
54301, 02, 11	GREEN BAY WI 54301
54303, 04, 13	GREEN BAY WI 54303
54401-03	WAUSAU WI 54401
54494, 95	WISCONSIN RAPIDS WI 54494
54901-04	OSHKOSH WI 54901
54911-15	APPLETON WI 54911
54935-37	FOND DU LAC WI 54935
54956, 57	NEENAH WI 54956
55104, 14	ST PAUL MN 55104
55105, 16	ST PAUL MN 55105
55110, 15, 27	ST PAUL MN 55110
55103, 17	ST PAUL MN 55117
55120-23	ST PAUL MN 55120
55119, 28	ST PAUL MN 55128
55125, 29	ST PAUL MN 55129
55305, 45, 91	MINNETONKA MN 55305

Column A ZIP Codes	Column B Label to
55317, 18, 31, 86	CHANHASSEN MN 55317
55344, 46, 47	EDEN PRAIRIE MN 55344
55403, 05	MINNEAPOLIS MN 55403
55404, 54	MINNEAPOLIS MN 55404
55411, 12	MINNEAPOLIS MN 55411
55413, 18	MINNEAPOLIS MN 55413
55414, 55	MINNEAPOLIS MN 55414
55417, 50	MINNEAPOLIS MN 55417
55420, 25, 31	MINNEAPOLIS MN 55420
55424, 36, 39	MINNEAPOLIS MN 55424
55428-30	MINNEAPOLIS MN 55428
55433, 48	MINNEAPOLIS MN 55433
55434, 49	MINNEAPOLIS MN 55434
55437, 38	MINNEAPOLIS MN 55437
55441, 42	MINNEAPOLIS MN 55441
55443-45	MINNEAPOLIS MN 55443
55446, 47	MINNEAPOLIS MN 55446
55901-03, 05	ROCHESTER MN 55901
55904, 06	ROCHESTER MN 55904
56001-03	MANKATO MN 56001
56301, 03, 04	ST CLOUD MN 56301
56501, 02	DETROIT LAKES MN 56501
56560-63	MOORHEAD MN 56560
57103, 04, 10	SIOUX FALLS SD 57103
57105-09	SIOUX FALLS SD 57105
57401, 02	ABERDEEN SD 57401
57701, 02, 09	RAPID CITY SD 57701
58102-04	FARGO ND 58102
58105-09	FARGO ND 58105
58201-08	GRAND FORKS ND 58201
58401, 02, 05	JAMESTOWN ND 58401
58501, 02, 05	BISMARCK ND 58501
58601, 02	DICKINSON ND 58601
58701-05, 07	MINOT ND 58701
58801, 02	WILLISTON ND 58801
59101, 05	BILLINGS MT 59101
59102, 06	BILLINGS MT 59102
59103, 04, 07, 08	BILLINGS MT 59103
59401, 02, 05	GREAT FALLS MT 59401
59403, 04, 06, 14	GREAT FALLS MT 59404
59701-03, 50	BUTTE MT 59701
59801, 03	MISSOULA MT 59801
59802, 04, 08	MISSOULA MT 59802
60411, 12	CHICAGO HEIGHTS IL 60411
60431, 34, 35	JOLIET IL 60431
60432, 33, 36	JOLIET IL 60432
60440, 90	BOLINGBROOK IL 60440
60441, 46	LOCKPORT IL 60441
60453, 59	OAK LAWN IL 60453
60415, 54-58	OAK LAWN IL 60454
60462, 67	ORLAND PARK IL 60462
60463-65, 82	PALOS HEIGHTS IL 60463
60477, 78	TINLEY PARK IL 60477
62025, 26	EDWARDSVILLE IL 62025
62201-08	EAST ST LOUIS IL 62201
62220-22, 25	BELLEVILLE IL 62220
62224, 58	MASCOUTAH IL 62258

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Column A ZIP Codes	Column B Label to
62301-06	QUINCY IL 62301
62901-03	CARBONDALE IL 62901
63005, 06	CHESTERFIELD MO 63005
63011, 22	BALLWIN MO 63011
63021, 24	BALLWIN MO 63021
63026, 99	FENTON MO 63026
63019, 28	FESTUS MO 63028
63032-34	FLORISSANT MO 63032
63044, 45	BRIDGETON MO 63044
63101, 02	ST LOUIS MO 63101
63104, 58	ST LOUIS MO 63104
63107, 15	ST LOUIS MO 63107
63108, 56	ST LOUIS MO 63108
63126, 27, 28	ST LOUIS MO 63126
63129, 51	ST LOUIS MO 63129
63134, 40	ST LOUIS MO 63134
63137, 38	ST LOUIS MO 63137
63301-04	ST CHARLES MO 63301
63366, 67	O'FALLON MO 63366
63601, 53	PARK HILLS MO 63601
63701-03	CAPE GIRARDEAU MO 63701
63901, 02	POPLAR BLUFF MO 63901
64013-15	BLUE SPRINGS MO 64015
64050, 51, 56, 58	INDEPENDENCE MO 64050
64053, 54	INDEPENDENCE MO 64053
64055, 57	INDEPENDENCE MO 64055
64063, 81, 82	LEES SUMMIT MO 64063
64064, 86	LEES SUMMIT MO 64064
64068, 69	LIBERTY MO 64068
64101, 02, 05, 96	KANSAS CITY MO 64105
64109, 28	KANSAS CITY MO 64109
64111, 71	KANSAS CITY MO 64111
64116, 17, 60, 61	KANSAS CITY MO 64116
64118, 88	KANSAS CITY MO 64118
64119, 57, 58, 67	KANSAS CITY MO 64119
64120, 25, 26	KANSAS CITY MO 64120
64123, 24	KANSAS CITY MO 64123
64129, 30	KANSAS CITY MO 64130
64133, 36	KANSAS CITY MO 64133
64134, 37, 92	KANSAS CITY MO 64134
64138, 39	KANSAS CITY MO 64138
64114, 45-49	KANSAS CITY MO 64145
64150, 52, 68	KANSAS CITY MO 64152
64151, 53, 54, 63, 64, 90	KANSAS CITY MO 64153
64155, 56, 65, 66	KANSAS CITY MO 64155
64501, 05, 06	ST JOSEPH MO 64501
64503, 04, 07	ST JOSEPH MO 64503
64801, 02	JOPLIN MO 64801
64803, 04	JOPLIN MO 64803
65201-29, 99	COLUMBIA MO 65201
65401, 02, 09	ROLLA MO 65401
65804, 08, 09	SPRINGFIELD MO 65804
65807, 10	SPRINGFIELD MO 65807
66027, 43, 48	FT LEAVENWORTH KS 66027
66044, 49	LAWRENCE KS 66044
66046, 47	LAWRENCE KS 66046
66051, 61	OLATHE KS 66061

Column A ZIP Codes	Column B Label to
66062, 63	OLATHE KS 66062
66101, 15, 17, 18	KANSAS CITY KS 66101
66102, 10	KANSAS CITY KS 66102
66103, 05	KANSAS CITY KS 66103
66109, 11-13	KANSAS CITY KS 66112
66202, 05, 22	SHAWNEE MISSION KS 66202
66203, 16	SHAWNEE MISSION KS 66203
66210, 25	SHAWNEE MISSION KS 66210
66212, 82	SHAWNEE MISSION KS 66212
66209, 13	SHAWNEE MISSION KS 66213
66214, 15, 85	SHAWNEE MISSION KS 66215
66217-20, 26, 27, 86	SHAWNEE MISSION KS 66217
66221, 23, 24	SHAWNEE MISSION KS 66223
66502, 03, 05, 06	MANHATTAN KS 66502
66603, 06, 07, 12, 16, 83	TOPEKA KS 66603
66604, 47, 67	TOPEKA KS 66604
66605, 09, 11	TOPEKA KS 66605
66608, 17, 18	TOPEKA KS 66608
66610, 14, 15	TOPEKA KS 66610
66762, 63	PITTSBURG KS 66762
67204, 19	WICHITA, KS 67204
67205, 12, 23	WICHITA KS 67205
67206, 26, 28, 30, 32	WICHITA KS 67206
67208, 20	WICHITA KS 67208
67209, 15, 27, 35	WICHITA KS 67209
67210, 16	WICHITA KS 67210
67401, 02	SALINA KS 67401
67501, 02, 04, 05	HUTCHINSON KS 67501
67901, 05	LIBERAL KS 67901
68025, 26	FREMONT NE 68025
68105, 06, 55	OMAHA NE 68105
68108, 09	OMAHA NE 68108
68110, 11, 19, 20	OMAHA NE 68110
68112, 52	OMAHA NE 68112
68114, 24	OMAHA NE 68114
68116, 18, 30, 54	OMAHA NE 68116
68117, 27	OMAHA NE 68117
68122, 34, 42, 64	OMAHA NE 68122
68123, 47	BELLEVUE NE 68123
68128, 33, 38, 57	PAPILLION NE 68128
68131, 32	OMAHA NE 68131
68135-39	OMAHA NE 68135
68144, 45	OMAHA NE 68144
68502, 42	LINCOLN NE 68502
68504, 07, 14, 17, 27	LINCOLN NE 68504
68506, 20	LINCOLN NE 68506
68512, 22, 23, 32	LINCOLN NE 68512
68516, 26	LINCOLN NE 68516
68521, 24, 28, 31	LINCOLN NE 68521
68601, 02	COLUMBUS NE 68601
68701, 02	NORFOLK NE 68701
68801-03	GRAND ISLAND NE 68801
68847-49	KEARNEY NE 68847
68901, 02	HASTINGS NE 68901
70501, 02, 04, 05, 07, 09	LAFAYETTE LA 70501
70503, 06	LAFAYETTE LA 70506
70704, 14	BAKER LA 70704

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
70706, 26, 27	DENHAM SPRINGS 70706
70707, 37	GONZALES LA 70707
70764, 65	PLAQUEMINE LA 70764
70801, 02, 21-23, 25, 83	BATON ROUGE LA 70801
70803, 93, 94	BATON ROUGE LA 70803
70805, 21, 92	BATON ROUGE LA 70805
70806, 96	BATON ROUGE LA 70806
70807, 11, 18, 74	BATON ROUGE LA 70807
70808, 20, 98	BATON ROUGE LA 70808
70809, 10, 36, 84	BATON ROUGE LA 70809
70814, 95	BATON ROUGE LA 70814
70815, 19, 31	BATON ROUGE LA 70815
70816, 17, 27, 79	BATON ROUGE LA 70816
71102, 20, 61-66	SHREVEPORT LA 71102
71103, 33	SHREVEPORT LA 71103
71104, 34	SHREVEPORT LA 71104
71105, 15, 35	SHREVEPORT LA 71105
71106, 06	SHREVEPORT LA 71106
71107, 37	SHREVEPORT LA 71107
71108,18, 38, 48	SHREVEPORT LA 71108
71109, 19, 29, 49	SHREVEPORT LA 71109
71111, 71, 72	BOSSIER CITY LA 71111
71112, 13	BOSSIER CITY LA 71112
71130, 53	SHREVEPORT LA 71130
71601-13	PINE BLUFF AR 71601
71901, 09, 13, 23, 53	HOT SPRINGS NTL PK AR 71901
72113-20, 24, 90	NORTH LITTLE ROCK AR 72113
72201-27	LITTLE ROCK AR 72201
72301-03	WEST MEMPHIS AR 72301
72315-19	BLYTHEVILLE AR 72315
72335, 36	FORREST CITY AR 72335
72396, 97	WYNNE AR 72396
72401-04	JONESBORO AR 72401
72450, 51	JONESBORO AR 72450
72501-03	BATESVILLE AR 72501
72701-04	FAYETTEVILLE AR 72701
72712-16	BENTONVILLE AR 72712
72901-16, 23	FORT SMITH AR 72901
73034, 83	EDMOND OK 73034
73069-72	NORMAN OK 73069
73501, 02, 05-07	LAWTON OK 73501
73701-06	ENID OK 73701
74003-06	BARTLESVILLE OK 74003
74011-14	BROKEN ARROW OK 74011
74017, 18	CLAREMORE OK 74017
74066, 67	SAPULPA OK 74066
74074-78	STILLWATER OK 74074
74354, 55	MIAMI OK 74354
74361, 62	PRYOR OK 74361
74401-03	MUSKOGEE OK 74401
74464, 65	TAHLEQUAH OK 74464
74467-77	WAGONER OK 74467
74501, 02	MCALESTER OK 74501
74601-04	PONCA CITY OK 74601
74701, 02	DURANT OK 74701
75006, 11	CARROLLTON TX 75006
75007, 10	CARROLLTON TX 75007

Column A ZIP Codes	Column B Label to
75020, 21	DENISON TX 75020
75022, 27, 28	FLOWER MOUND TX 75022
75024, 25	PLANO TX 75024
75026, 75, 93	PLANO TX 75026
75029, 57	LEWISVILLE TX 75029
75030, 88, 89	ROWLETT TX 75030
75032, 87	ROCKWALL TX 75032
75034, 35	FRISCO TX 75034
75016, 38, 39	IRVING TX 75038
75040, 42, 46	GARLAND TX 75040
75041, 47	GARLAND TX 75041
75043, 49	GARLAND TX 75043
75044, 45, 48	GARLAND TX 75044
75050, 51, 53	GRAND PRAIRIE TX 75050
75052, 54	GRAND PRAIRIE TX 75052
75060, 17	IRVING TX 75060
75061, 15, 84	IRVING TX 75061
75014, 62	IRVING TX 75062
75067, 77	LEWISVILLE TX 75067
75069, 70	MCKINNEY TX 75069
75074, 94	PLANO TX 75074
75080, 83	RICHARDSON TX 75080
75081, 82, 85	RICHARDSON TX 75081
75090, 91, 92	SHERMAN TX 75090
75104, 06	CEDAR HILL TX 75104
75110, 51	CORSICANA TX 75110
75115, 23	DE SOTO TX 75115
75116, 37, 38	DUNCANVILLE TX 75116
75119, 20	ENNIS TX 75119
75134, 46	LANCASTER TX 75134
75149, 50, 80-82	MESQUITE TX 75149
75160, 61	TERRELL TX 75160
75165, 67, 68	WAXAHACHIE TX 75165
75202, 50	DALLAS TX 75202
75210, 15, 23, 26, 46	DALLAS TX 75210
75211, 33, 36, 49	DALLAS TX 75211
75224, 32, 37	DALLAS TX 75224
75235, 45	DALLAS TX 75235
75252, 87	DALLAS TX 75252
76007, 10	ARLINGTON TX 76010
76005, 06, 11	ARLINGTON TX 76011
76012, 94	ARLINGTON TX 76012
76004, 13	ARLINGTON TX 76013
76003, 14, 18, 96	ARLINGTON TX 76014
76001, 15-17	ARLINGTON TX 76015
76501-05, 08	TEMPLE TX 76501
76540, 41, 43	KILLEEN TX 76540
76542, 47, 48	KILLEEN TX 76542
76544-46	KILLEEN TX 76544
76701, 03, 06, 11	WACO TX 76701
76704, 05, 15	WACO TX 76704
76707, 08	WACO TX 76707
76710, 14	WACO TX 76710
76702, 12	WACO TX 76712
77301-06, 84, 85	CONROE TX 77301
77325, 39, 45	HUMBLE TX 77325
77327, 28	CLEVELAND TX 77327

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
77338, 46, 47, 96	HUMBLE TX 77338
77340-44, 48, 49	HUNTSVILLE TX 77340
77373, 83, 88	SPRING TX 77373
77375, 77	TOMBALL TX 77375
77379, 89, 91	SPRING TX 77379
77380, 86, 87	SPRING TX 77380
77381, 82, 93	SPRING TX 77381
77401, 02	BELLAIRE TX 77401
77404, 14	BAY CITY TX 77404
77406, 69	RICHMOND TX 77406
77410, 29, 33	CYPRESS TX 77410
77449, 50, 91-94	KATY TX 77449
77459, 89	MISSOURI CITY TX 77459
77477, 97	STRAFFORD TX 77477
77478, 87	SUGAR LAND TX 77478
77479, 96	SUGAR LAND TX 77479
77501, 02, 06	PASADENA TX 77501
77503-05, 07, 08	PASADENA TX 77503
77510, 17	SANTA FE TX 77510
77511, 12	ALVIN TX 77511
77515, 16	ANGLETON TX 77515
77520-22	BAYTOWN TX 77520
77541, 42	FREEPORT TX 77541
77546, 49	FRIENDSWOOD TX 77546
77550, 53, 55	GALVESTON TX 77550
77551, 52, 54	GALVESTON TX 77551
77571, 72	LA PORTE TX 77571
77573, 74	LEAGUE CITY TX 77573
77581, 84, 88	PEARLAND TX 77581
77590, 92	TEXAS CITY TX 77590
77630, 32	ORANGE TX 77630
77640, 43	PORT ARTHUR TX 77640
77662, 70	VIDOR TX 77662
77801-08	BRYAN TX 77801
77833, 34	BRENHAM TX 77833
77840-45	COLLEGE STATION TX 77840
77868, 69	NAVASOTO TX 77868
78028, 29	KERRVILLE TX 78028
78040-46	LAREDO TX 78040
78102-04	BEEVILLE TX 78102
78130-33	NEW BRAUNFELS TX 78130
78148-50	UNIVERSAL CITY TX 78148
78155, 56	SEGUIN TX 78155
78202, 04, 07, 83	SAN ANTONIO TX 78202
78203, 10	SAN ANTONIO TX 78203
78205, 06, 91-99	SAN ANTONIO TX 78205
78208, 09	SAN ANTONIO TX 78208
78211, 14, 21, 24-26, 64	SAN ANTONIO TX 78211
78212, 15	SAN ANTONIO TX 78212
78216, 79	SAN ANTONIO TX 78216
78219, 20, 22, 44, 62, 63	SAN ANTONIO TX 78219
78227, 42	SAN ANTONIO TX 78227
78230, 31, 48, 78	SAN ANTONIO TX 78230
78232, 47, 58-61, 70	SAN ANTONIO TX 78232
78233, 39, 66	SAN ANTONIO TX 78233
78238, 68	SAN ANTONIO TX 78238
78240, 49, 55-57, 69	SAN ANTONIO TX 78240

Column A ZIP Codes	Column B Label to
78245, 50-54, 76	SAN ANTONIO TX 78245
78332, 33	ALICE TX 78332
78363, 64	KINGSVILLE TX 78363
78382, 81	ROCKPORT TX 78382
78401-03, 07, 08, 70, 71, 73, 75-78	CORPUS CHRISTI TX 78401
78404, 63	CORPUS CHRISTI TX 78404
78405, 65	CORPUS CHRISTI TX 78405
78406, 09, 10, 60, 26	CORPUS CHRISTI TX 78406
78411, 66	CORPUS CHRISTI TX 78411
78412, 14, 68	CORPUS CHRISTI TX 78412
78413, 27, 72	CORPUS CHRISTI TX 78413
78415, 16, 17, 67	CORPUS CHRISTI TX 78415
78418, 19, 80	CORPUS CHRISTI TX 78418
78502, 05	MCALLEN TX 78502
78503, 04, 77	MCALLEN TX 78503
78520-26	BROWNSVILLE TX 78520
78539, 40	MCALLEN TX 78539
78550-53	HARLINGEN TX 78550
78572, 73	MISSION TX 78572
78613, 30	CEDAR PARK TX 78613
78626-28	GEORGETOWN TX 78626
78336, 35	ARANSAS PASS TX 78636
78641, 45, 46	LEANDER TX 78641
78664, 82, 83	ROUND ROCK TX 78664
78666, 67	SAN MARCOS TX 78666
78669, 90	PFLUGERVILLE TX 78669
78680, 81	ROUND ROCK TX 78680
78702, 21, 22	AUSTIN TX 78702
78705, 51	AUSTIN TX 78705
78712, 13	AUSTIN TX 78712
78717, 26, 29, 50	AUSTIN TX 78717
78719, 41, 42, 44	AUSTIN TX 78719
78723-25	AUSTIN TX 78723
78727, 58	AUSTIN TX 78727
78728, 53	AUSTIN TX 78728
78730, 59	AUSTIN TX 78730
78732, 34	AUSTIN TX 78732
78733, 46	AUSTIN TX 78733
78735-37, 39, 49	AUSTIN TX 78735
78747, 48	AUSTIN TX 78747
78752-54	AUSTIN TX 78752
78756, 57	AUSTIN TX 78756
78801, 02	UVALDE TX 78801
78840-43, 47	DEL RIO TX 78840
78852, 53	EAGLE PASS TX 78852
79101-04	AMARILLO TX 79101
79106, 19, 21, 24, 60	AMARILLO TX 79106
79107, 08, 11	AMARILLO TX 79107
79110, 18	AMARILLO TX 79110
79401, 03, 05, 08, 11, 15, 17	LUBBOCK TX 79401
79404, 12, 23, 52	LUBBOCK TX 79404
79406, 09, 30	LUBBOCK TX 79406
79407, 14	LUBBOCK TX 79407
79410, 13	LUBBOCK TX 79410
79416, 90	LUBBOCK TX 79416

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
79424, 64	LUBBOCK TX 79424
79903, 23	EL PASO TX 79903
79905, 95	EL PASO TX 79905
79906, 08, 16, 18	EL PASO TX 79906
79907, 17	EL PASO TX 79907
79913, 22, 32	EL PASO TX 79913
79914, 24, 34	EL PASO TX 79914
79915, 26	EL PASO TX 79915
79927, 29	EL PASO TX 79927
79930, 31	EL PASO TX 79930
79935, 37	EL PASO TX 79935
79936, 38	EL PASO TX 79936
79940-55, 58, 60, 61, 76, 78, 80, 99	EL PASO TX 79940
79997, 98	EL PASO TX 79997
80001, 02, 04	ARVADA CO 80001
80003, 05, 06, 07	ARVADA CO 80003
80010, 40, 45	AURORA CO 80010
80011, 18, 19, 42	AURORA CO 80011
80012, 41	AURORA CO 80012
80014, 44	AURORA CO 80014
80015, 16, 46	AURORA CO 80015
80017, 47	AURORA CO 80017
80020, 21, 38	BROOMFIELD CO 80020
80033, 34	WHEAT RIDGE CO 80033
80110-12, 55	ENGLEWOOD CO 80110
80120, 60	LITTLETON CO 80120
80121, 22, 61	LITTLETON CO 80121
80124, 26, 63	LITTLETON CO 80124
80127, 62	LITTLETON CO 80127
80202, 65, 90, 93, 94	DENVER CO 80202
80203, 64, 95	DENVER CO 80203
80210, 50	DENVER CO 80210
80227, 35, 36	DENVER CO 80227
80233, 41	DENVER CO 80233
80239, 49	DENVER CO 80239
80301, 08	BOULDER CO 80301
80302, 06	BOULDER CO 80302
80307, 08	BOULDER CO 80308
80437, 39	EVERGREEN CO 80437
80477, 87	STEAMBOAT SPRINGS CO 80477
80501, 04	LONGMONT CO 80501
80521, 22, 24	FT COLLINS CO 80521
80525-28	FT COLLINS CO 80525
80537, 39	LOVELAND CO 80537
80840, 41	USAF ACADEMY CO 80840
80901, 03, 05	COLORADO SPGS CO 80901
80904, 34	COLORADO SPGS CO 80904
80906, 37, 60	COLORADO SPGS CO 80906
80907, 33	COLORADO SPGS CO 80907
80908, 20, 21, 62	COLORADO SPGS CO 80908
80909, 32	COLORADO SPGS CO 80909
80910, 35	COLORADO SPGS CO 80910
80911, 25, 31	COLORADO SPGS CO 80911
80913, 26	COLORADO SPGS CO 80913
80915, 16, 22, 28, 29, 30, 70	COLORADO SPGS CO 80915

Column A ZIP Codes	Column B Label to
80917, 18, 36	COLORADO SPGS CO 80917
80919, 49	COLORADO SPGS CO 80919
81002, 07	PUEBLO CO 81002
81003, 08	PUEBLO CO 81003
81004-06	PUEBLO CO 81004
81101, 02	ALAMOSA CO 81101
81147, 57	PAGOSA SPRINGS CO 81147
81212, 15	CANON CITY CO 81212
81301, 02	DURANGO CO 81301
82001, 07, 09	CHEYENNE WY 82001
82051, 57, 63, 70-73	LARAMIE WY 82070
82602, 05	CASPER WY 82602
82601, 04, 09	CASPER WY 82609
82716-18	GILLETTE WY 82716
82901, 02	ROCK SPRINGS WY 82901
82930, 31	EVANSTON WY 82930
83001, 02	JACKSON WY 83001
83605, 06	CALDWELL ID 83605
83642, 80	MERIDIAN ID 83642
83647, 48	MOUNTAIN HOME ID 83647
83651, 53, 86, 87	NAMPA ID 83651
83702, 03, 06, 12	BOISE ID 83702
83704, 11, 13	BOISE ID 83704
83709, 19	BOISE ID 83709
83716, 17	BOISE ID 83716
83814-16	COEUR D ALENE ID 83814
84003, 04	AMERICAN FORK UT 84003
84010, 11	BOUNTIFUL UT 84010
84015, 75, 89	CLEARFIELD UT 84015
84036, 61	KAMAS UT 84036
84040, 41	LAYTON UT 84040
84042, 62	PLEASANT GROVE UT 84042
84057, 59	OREM UT 84057
84058, 97	OREM UT 84058
84060, 68, 98	PARK CITY UT 84060
84065, 95	RIVERTON UT 84065
84070, 91, 94	SANDY UT 84070
84078, 79	VERNAL UT 84078
84084, 88	WEST JORDAN UT 84084
84090, 92, 93	SANDY UT 84090
84101, 44, 80	SALT LAKE CTY UT 84101
84106, 52	SALT LAKE CTY UT 84106
84107, 57	SALT LAKE CTY UT 84107
84108, 58	SALT LAKE CTY UT 84108
84110, 45, 51	SALT LAKE CTY UT 84110
84111, 33, 38	SALT LAKE CTY UT 84111
84115, 65	SALT LAKE CTY UT 84115
84120, 28, 70	SALT LAKE CTY UT 84120
84121, 71	SALT LAKE CTY UT 84121
84125, 26, 27	SALT LAKE CTY UT 84125
84302, 24	BRIGHAM CITY UT 84302
84321, 23	LOGAN UT 84321
84401, 09	OGDEN UT 84401
84402, 03, 05, 15	OGDEN UT 84403
84404, 12, 14	OGDEN UT 84404
84511, 33	BLANDING UT 84511
84601, 03, 05, 06	PROVO UT 84601

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
84663, 64	SPRINGVILLE UT 84663
84701, 32	RICHFIELD UT 84701
84720, 22, 81	CEDAR CITY UT 84720
84770, 71, 82	ST GEORGE UT 84770
85001, 02	PHOENIX AZ 85001
85003, 04, 25, 30, 73	PHOENIX AZ 85004
85008, 10	PHOENIX AZ 85008
85005, 07, 09, 98	PHOENIX AZ 85009
85013, 67	PHOENIX AZ 85013
85011, 14	PHOENIX AZ 85014
85016, 64	PHOENIX AZ 85016
85017, 61, 79	PHOENIX AZ 85017
85018, 60	PHOENIX AZ 85018
85020, 22, 68	PHOENIX AZ 85020
85021, 69	PHOENIX AZ 85021
85022, 68	PHOENIX AZ 85022
85023, 80	PHOENIX AZ 85023
85024, 50, 54	PHOENIX AZ 85024
85029, 53, 71	PHOENIX AZ 85029
85019, 31, 43, 63	PHOENIX AZ 85031
85032, 46, 78	PHOENIX AZ 85032
85034, 36, 74	PHOENIX AZ 85034
85038, 62, 72, 82, 99	PHOENIX AZ 85038
85040, 66	PHOENIX AZ 85040
85044, 76	PHOENIX AZ 85044
85045, 48, 70	PHOENIX AZ 85048
85201, 11	MESA AZ 85201
85202, 74	MESA AZ 85202
85203, 13, 75	MESA AZ 85203
85204, 14	MESA AZ 85204
85205, 07, 15, 77	MESA AZ 85205
85206, 12, 16	MESA AZ 85206
85217, 19, 20, 78	APACHE JUNCTION AZ 85219
85222, 30	CASA GRANDE AZ 85222
85224, 46	CHANDLER AZ 85224
85225, 44	CHANDLER AZ 85225
85232, 79	FLORENCE AZ 85232
85233, 34, 96, 99	GILBERT AZ 85233
85248, 49	CHANDLER AZ 85248
85250, 53	SCOTTSDALE AZ 85250
85251, 52	SCOTTSDALE AZ 85251
85255, 60, 62, 67	SCOTTSDALE AZ 85255
85256, 57, 71	SCOTTSDALE AZ 85256
85258, 61	SCOTTSDALE AZ 85258
85259, 63, 64, 68, 69	SCOTTSDALE AZ 85259
85281, 86	TEMPE AZ 85281
85283, 84	TEMPE AZ 85283
85285, 87-89	TEMPE AZ 85285
85301, 03, 05, 07, 09, 11	GLENDALE AZ 85301
85302, 04, 06, 12	GLENDALE AZ 85302
85308, 10, 18	GLENDALE AZ 85308
85323, 38	AVONDALE AZ 85323
85345, 80	PEORIA AZ 85345
85351, 72	SUN CITY AZ 85351
85358, 90	WICKENBURG AZ 85358
85363, 73	YOUNGTOWN AZ 85363
85364-67, 69	YUMA AZ 85364

Column A ZIP Codes	Column B Label to
85374-76, 78, 79, 87	SUN CITY AZ 85374
85381, 82	PEORIA AZ 85381
85501, 02	GLOBE AZ 85501
85541, 44, 47	PAYSON AZ 85541
85546, 48	SAFFORD AZ 85546
85607, 08	DOUGLAS AZ 85607
85614, 22	GREEN VALLEY AZ 85614
85621, 28, 62	NOGALES AZ 85621
85613, 35, 36, 50	SIERRA VISTA AZ 85635
85643, 44	WILLCOX AZ 85643
85701, 02	TUCSON AZ 85701
85706, 77	TUCSON AZ 85706
85712, 49	TUCSON AZ 85712
85713, 14	TUCSON AZ 85713
85715, 50	TUCSON AZ 85715
85720, 21	TUCSON AZ 85720
85726, 44	TUCSON AZ 85726
85730, 47, 48	TUCSON AZ 85730
85737, 39	TUCSON AZ 85737
85741, 42	TUCSON AZ 85741
85735, 36, 46	TUCSON AZ 85746
86001, 02	FLAGSTAFF AZ 86001
86003, 04	FLAGSTAFF AZ 86003
86301-04, 05	PRESCOTT AZ 86301
86312-14	PRESCOTT VALLEY AZ 86314
86322, 24, 31	CAMP VERDE AZ 86322
86336, 39-41, 51	SEDONA AZ 86336
86401, 02, 13	KINGMAN AZ 86401
86403-06	LAKE HAVASU CITY AZ 86403
87102, 04, 94	ALBUQUERQUE NM 87102
87105, 21, 95	ALBUQUERQUE NM 87105
87106, 96	ALBUQUERQUE NM 87106
87107, 13, 97	ALBUQUERQUE NM 87107
87108, 98	ALBUQUERQUE NM 87108
87109, 22, 99	ALBUQUERQUE NM 87109
87110, 76, 90	ALBUQUERQUE NM 87110
87111, 54, 91	ALBUQUERQUE NM 87111
87112, 53, 92	ALBUQUERQUE NM 87112
87114, 20, 84, 87, 93	ALBUQUERQUE NM 87114
87123, 81	ALBUQUERQUE NM 87123
87124, 74	ALBUQUERQUE NM 87124
87301, 05	GALLUP NM 87301
87401, 02, 99	FARMINGTON NM 87401
87502, 04	SANTA FE NM 87502
87532, 33	ESPANOLA NM 87532
88001, 11	LAS CRUCES NM 88001
88004, 06	LAS CRUCES NM 88004
88005, 12	LAS CRUCES NM 88005
88030, 31	DEMING NM 88030
88061, 62	SILVER CITY NM 88061
88101, 02	CLOVIS NM 88101
88210, 11	ARTESIA NM 88210
88220, 21	CARLSBAD NM 88220
88240-42	HOBBS NM 88240
88310, 11	ALAMOGORDO NM 88310
89005, 06	BOULDER CITY NV 89005
89012, 14	HENDERSON NV 89014

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Column A ZIP Codes	Column B Label to
89011, 15	HENDERSON NV 89015
89018, 70	INDIAN SPRINGS NV 89018
89019, 26	JEAN NV 89019
89028, 29	LAUGHLIN NV 89028
89031, 33	NORTH LAS VEGAS NV 89031
89041, 48	PAHRUMP NV 89041
89049, 50	TONOPAH NV 89049
89102, 46	LAS VEGAS NV 89102
89103, 13, 35	LAS VEGAS NV 89103
89117, 47	LAS VEGAS NV 89117
89120, 23, 39	LAS VEGAS NV 89120
89128, 34, 38	LAS VEGAS NV 89128
89129, 30, 31	LAS VEGAS NV 89129
89431, 32	SPARKS NV 89431
89434, 35, 36	SPARKS NV 89434
89450, 51, 52	INCLINE VILLAGE NV 89450
89501, 12	RENO NV 89501
89503, 13	RENO NV 89503
89504, 05	RENO NV 89504
89510, 15	RENO NV 89510
89523, 33	RENO NV 89623
89701-06, 21	CARSON CITY NV 89701
90201, 02, 70	BELL CA 90201
90220-24	COMPTON CA 90220
90230-33	CULVER CITY CA 90230
90239-42	DOWNEY CA 90240
90245, 66, 67	EL SEGUNDO CA 90245
90247-49	GARDENA CA 90247
90250, 51	HAWTHORNE CA 90250
90260, 61	LAWNDALE CA 90260
90263-65	MALIBU CA 90265
90274, 75	PALOS VERDES CA 90274
90254, 77, 78	REDONDO BEACH CA 90277
90291-96	VENICE CA 90291
90301-13	INGLEWOOD CA 90301
90401, 06, 07	SANTA MONICA CA 90401
90402-05, 08-11	SANTA MONICA CA 90403
90501-10	TORRANCE CA 90501
90601, 08	WHITTIER CA 90601
90602, 07	WHITTIER CA 90602
90603, 04, 09	WHITTIER CA 90603
90605, 06, 10	WHITTIER CA 90605
90620-24	BUENA PARK CA 90620
90631-33	LA HABRA CA 90631
90637-39	LA MIRADA CA 90637
90650-52	NORWALK CA 90650
90660-65	PICO RIVERA CA 90660
90701-03	ARTESIA CA 90701
90706, 07	BELLFLOWER CA 90706
90711-14	LAKEWOOD CA 90712
90715, 16	LAKEWOOD CA 90715
90720, 21	LOS ALAMITOS CA 90720
90731-34	SAN PEDRO CA 90731
90744, 48	WILMINGTON CA 90744
90745, 47, 49	CARSON CA 90745
90803, 53	LONG BEACH CA 90803
91301, 76	AGOURA HILLS CA 91301

Column A ZIP Codes	Column B Label to
91303-05, 09	CANOGA PARK CA 91304
91306, 96	WINNETKA CA 91306
91307, 08	WEST HILLS CA 91307
91311-13	CHATSWORTH CA 91311
91319, 20	NEWBURY PARK CA 91319
91321, 22, 81	NEWHALL CA 91321
91324, 25, 28-30	NORTHRIDGE CA 91324
91326, 27	NORTHRIDGE CA 91326
91331, 33, 34	PACOIMA CA 91331
91335, 37	RESEDA CA 91335
91340-42, 92	SYLMAR CA 91342
91343, 93	NORTH HILLS CA 91343
91344-46, 94, 95	MISSION HILLS CA 91345
91310, 50, 80, 84	SANTA CLARITA CA 91350
91351, 86	CANYON COUNTRY CA 91351
91352, 53	SUN VALLEY CA 91352
91354, 55, 85	VALENCIA CA 91355
91356, 57	TARZANA CA 91356
91358-63	THOUSAND OAKS CA 91360
91302, 64, 65, 67, 71, 72, 99	WOODLAND HILLS CA 91364
91403, 13, 23	SHERMAN OAKS CA 91403
91601-03	NORTH HOLLYWOOD CA 91601
91604, 14	STUDIO CITY CA 91604
91605, 06, 08-12, 15, 16, 18	NORTH HOLLYWOOD CA 91605
91607, 17	VALLEY VILLAGE CA 91607
91701, 37	ALTA LOMA CA 91701
91718-20	CORONA CA 91718
91722, 24	COVINA CA 91722
91729, 30, 39	RANCHO CUCAMONGA CA 91730
91731, 32, 34	EL MONTE CA 91731
91740, 41	GLENDORA CA 91740
91744-47, 49	LA PUENTE CA 91744
91754, 55	MONTEREY PARK CA 91754
91761, 62, 64	ONTARIO CA 91761
91766-69	POMONA CA 91767
91775, 76, 78	SAN GABRIEL CA 91775
91784-86	UPLAND CA 91786
91788, 89	WALNUT CA 91789
91790-93	WEST COVINA CA 91790
91801-03	ALHAMBRA CA 91801
91901, 03	ALPINE CA 91901
91902, 08	BONITA CA 91902
91909, 11	CHULA VISTA CA 91909
91910, 12	CHULA VISTA CA 91910
91913, 14, 15, 21	CHULA VISTA CA 91913
91932, 33	IMPERIAL BEACH CA 91932
91941-44	LA MESA CA 91941
91945, 46	LEMON GROVE CA 91945
91947, 50, 51	NATIONAL CITY CA 91950
91976-79	SPRING VALLEY CA 91977
92008, 18	CARLSBAD CA 92008
92019, 20, 22	EL CAJON CA 92020
92023, 24	ENCINITAS CA 92024
92025, 29, 33, 46	ESCONDIDO CA 92025
92026, 27, 30	ESCONDIDO CA 92026

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
92028, 88	FALLBROOK CA 92028
92037, 38, 39	LA JOLLA CA 92037
92049, 51, 52, 54, 55, 57	OCEANSIDE CA 92054
92056, 58	OCEANSIDE CA 92056
92064, 74	POWAY CA 92064
92067, 91	RANCHO SANTA FE CA 92067
92069, 79, 96	SAN MARCOS CA 92069
92071, 72	SANTEE CA 92071
92084, 85	VISTA CA 92084
92092, 93	LA JOLLA CA 92093
92201-03	INDIO CA 92201
92225, 26, 42, 80	BLYTHE CA 92225
92231, 32	CALEXICO CA 92231
92234, 35	CATHEDRAL CITY CA 92234
92243, 44	EL CENTRO CA 92243
92210, 11, 55, 60, 61	PALM DESERT CA 92260
92262, 64	PALM SPRINGS CA 92262
92277, 78	TWENTYNINE PALMS CA 92277
92284-86	YUCCA VALLEY CA 92284
92307, 08	APPLE VALLEY CA 92307
92310-12	BARSTOW CA 92311
92314, 86	BIG BEAR CITY CA 92314
92313, 24	COLTON CA 92324
92334-37	FONTANA CA 92335
92340, 45	HESPERIA CA 92345
92329, 71	PHELAN CA 92371
92373-75	REDLANDS CA 92373
92376, 77	RIALTO CA 92376
92392-94	VICTORVILLE CA 92392
92401, 02, 08, 10	SN BERNARDINO CA 92401
92404, 13	SN BERNARDINO CA 92404
92405, 06	SN BERNARDINO CA 92405
92407, 27	SN BERNARDINO CA 92407
92501, 02	RIVERSIDE CA 92501
92503, 13	RIVERSIDE CA 92503
92504, 14	RIVERSIDE CA 92504
92505, 15	RIVERSIDE CA 92505
92506, 16	RIVERSIDE CA 92506
92507, 17	RIVERSIDE CA 92507
92508, 18	RIVERSIDE CA 92508
92509, 19	RIVERSIDE CA 92509
92530-32	LAKE ELSINORE CA 92531
92543-46	HEMET CA 92543
92551-55	MORENO VALLEY CA 92553
92556, 57	MORENO VALLEY CA 92557
92562-64	MURRIETA CA 92562
92570-72	PERRIS CA 92570
92581-83	SAN JACINTO CA 92583
92584-87	SUN CITY CA 92586
92589-93	TEMECULA CA 92591
92607, 77	LAGUNA NIGUEL CA 92607
92615, 46	HUNTINGTON BEACH CA 92615
92602-04, 18-20, 50	IRVINE CA 92619
92606, 14, 23	IRVINE CA 92623
92626-28	COSTA MESA CA 92628
92624, 29	DANA POINT CA 92629
92605, 47, 49	HUNTINGTON BEACH CA 92647

Column A ZIP Codes	Column B Label to
92651, 52	LAGUNA CA 92651
92653, 54	LAGUNA HILLS CA 92653
92657, 58, 60	NEWPORT BEACH CA 92658
92659, 63	NEWPORT BEACH CA 92659
92672-74	SAN CLEMENTE CA 92672
92683, 84	WESTMINSTER CA 92683
92610, 79, 88	RCHO STA MARG CA 92688
92675, 90-93	MISSION VIEJO CA 92690
92780-82	TUSTIN CA 92781
92701-12, 28, 35, 99	SANTA ANA CA 92799
92821-23	BREA CA 92822
92831, 34	FULLERTON CA 92834
92832, 36	FULLERTON CA 92836
92833, 37	FULLERTON CA 92837
92835, 38	FULLERTON CA 92838
92840-44	GARDEN GROVE CA 92842
92845, 46	GARDEN GROVE CA 92846
92856-69	ORANGE CA 92863
92870, 71	PLACENTIA CA 92871
92885-87	YORBA LINDA CA 92885
92801-08, 12, 14-17, 25, 50, 99	ANAHEIM CA 92899
93001, 02, 05, 07	VENTURA CA 93001
93003, 04, 06, 09	VENTURA CA 93003
93010, 11, 12	CAMARILLO CA 93010
93013, 14	CARPINTERIA CA 93013
93015, 16	FILLMORE CA 93015
93020, 21	MOORPARK CA 93020
93023, 24	OJAI CA 93023
93030, 31, 32, 35	OXNARD CA 93030
93033, 34	OXNARD CA 93033
93041-44	PORT HUENEME CA 93041
93060, 61	SANTA PAULA CA 93060
93062-65, 93, 97, 99	SIMI VALLEY CA 93065
93215, 16	DELANO CA 93215
93222, 25	FRAZIER PARK CA 93225
93230-32	HANFORD CA 93230
93245, 46	LEMOORE CA 93245
93257, 58	PORTERVILLE CA 93257
93274, 75	TULARE CA 93274
93277, 78	VISALIA CA 93277
93279, 91	VISALIA CA 93279
93401-10, 12	SAN LUIS OBISPO CA 93401
93436-38	LOMPOC CA 93436
93454-58	SANTA MARIA CA 93454
93501, 02	MOJAVE CA 93501
93504, 05	CALIFORNIA CITY CA 93505
93514, 15	BISHOP CA 93514
93516, 96	BORON CA 93516
93523, 24	EDWARDS CA 93523
93534-36, 39, 84, 86	LANCASTER CA 93534
93550-52, 90, 91	PALMDALE CA 93550
93555, 56	RIDGECREST CA 93555
93561, 62, 81, 82	TEHACHAPI CA 93561
93611-13	CLOVIS CA 93612
93637-39	MADERA CA 93638
93901-17, 62	SALINAS CA 93907

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
93921-23	CARMEL CA 93923
93940-44	MONTEREY CA 93940
93950, 51	PACIFIC GROVE CA 93950
94010, 11	BURLINGAME CA 94010
94014-17	DALY CITY CA 94014
94023, 24	LOS ALTOS CA 94023
94025, 26, 28	MENLO PARK CA 94025
94035, 41-43	MOUNTAIN VIEW CA 94041
94061-65	REDWOOD CITY CA 94061
94080, 83	S SAN FRANCISCO CA 94080
94086-88	SUNNYVALE CA 94086
94301, 02, 06	PALO ALTO CA 94301
94303, 04	PALO ALTO CA 94303
94305, 09	STANFORD CA 94305
94401, 02	SAN MATEO CA 94401
94403, 04	SAN MATEO CA 94403
94501, 02	ALAMEDA CA 94501
94506, 26	DANVILLE CA 94506
94509, 31	ANTIOCH CA 94509
94518-24, 27, 29	CONCORD CA 94520
94533, 35	FAIRFIELD CA 94533
94536, 55	FREMONT CA 94536
94540-45, 57	HAYWARD CA 94544
94546, 52	CASTRO VALLEY CA 94546
94550, 51	LIVERMORE CA 94550
94556, 75	MORAGA CA 94556
94558, 59, 81	NAPA CA 94558
94566, 68, 88	PLEASANTON CA 94566
94547, 72	RODEO CA 94572
94577-79	SAN LEANDRO CA 94577
94589-92	VALLEJO CA 94590
94595-98	WALNUT CREEK CA 94596
94925, 39, 76, 77	CORTE MADERA CA 94925
94927, 28, 31	ROHNERT PARK CA 94931
94941, 42	MILL VALLEY CA 94941
94945, 47-49	NOVATO CA 94947
94952, 54	PETALUMA CA 94952
94930, 60, 78, 79	SAN ANSELMO CA 94960
94965, 66	SAUSALITO CA 94965
95001, 03	APTOS CA 95003
95020, 21	GILROY CA 95020
95023, 24	HOLLISTER CA 95023
95030-32	LOS GATOS CA 95030
95037, 38	MORGAN HILL CA 95037
95050-56	SANTA CLARA CA 95050
95060-67	SANTA CRUZ CA 95060
95070, 71	SARATOGA CA 95070
95076, 77	WATSONVILLE CA 95076
95340, 41, 44, 48	MERCED CA 95340
95380-82	TURLOCK CA 95380
95472, 73	SEBASTOPOL CA 95472
95602-04	AUBURN CA 95603
95608, 09	CARMICHAEL CA 95608
95610, 11, 21	CITRUS HEIGHTS CA 95610
95616-18	DAVIS CA 95616
95661, 78	ROSEVILLE CA 95678
95687, 88, 96	VACAVILLE CA 95687

Column A ZIP Codes	Column B Label to
95605, 91	WEST SACRAMENTO CA 95691
95926-29, 73, 76	CHICO CA 95926
95945, 49	GRASS VALLEY CA 95945
95965, 66	OROVILLE CA 95965
95967, 69	PARADISE CA 95969
95991, 92	YUBA CITY CA 95991
96150-58	SOUTH LAKE TAHOE CA 96150
96160, 61	TRUCKEE CA 96160
96720, 21	HILO HI 96721
96732, 33	KAHULUI HI 96732
96739, 40, 45	KAILUA KONA HI 96740
96738, 43	KAMUELA HI 96743
96761, 67	LAHAINA HI 96761
96701, 82	PEARL CITY HI 96782
96754, 57, 86	WAHIAWA HI 96786
96707, 09, 97	WAIPAHU HI 96797
97005, 08	BEAVERTON, OR 97005
97201, 58	PORTLAND OR 97201
97202, 82	PORTLAND OR 97202
97203, 31, 83	PORTLAND OR 97203
97204, 05, 40	PORTLAND OR 97204
97206, 86	PORTLAND OR 97206
97208, 28	PORTLAND OR 97208
97209, 10, 96	PORTLAND OR 97209
97212, 27	PORTLAND OR 97212
97213, 18, 38	PORTLAND OR 97213
97214, 32, 93	PORTLAND OR 97214
97215, 16, 33, 92	PORTLAND OR 97215
97219, 80	PORTLAND OR 97219
97220, 30, 94	PORTLAND OR 97220
97221, 25, 98	PORTLAND OR 97221
97222, 67-69	PORTLAND OR 97222
97223, 24, 81	PORTLAND OR 97223
97229, 91	PORTLAND OR 97229
97236, 66, 90	PORTLAND OR 97236
97301, 03, 05	SALEM OR 97301
97302, 06	SALEM OR 97302
97330, 31, 33, 35	CORVALIS OR 97333
97401, 40	EUGENE OR 97401
97404, 08	EUGENE OR 97404
97403, 05, 55	EUGENE OR 97405
97477, 78	SPRINGFIELD OR 97477
97501, 04	MEDFORD OR 97501
97526, 27	GRANTS PASS OR 97526
97601-03	KLAMATH FALLS OR 97601
97701, 02, 07-09	BEND OR 97701
98001, 02, 47, 71, 92	AUBURN WA 98002
98003, 23, 63, 93	FEDERAL WAY WA 98003
98004, 39	BELLEVUE WA 98004
98005, 15	BELLEVUE WA 98005
98007, 08	BELLEVUE WA 98007
98011, 41	BOTHELL WA 98011
98012, 21, 82	BOTHELL WA 98012
98020, 26	EDMONDS WA 98020
98022, 38	ENUMCLAW WA 98022
98027, 29	ISSAQUAH WA 98027
98031, 42, 64	KENT WA 98031

L001 5-Digit Scheme –Periodical and Standard (A) Flats

Column A ZIP Codes	Column B Label to
98032, 35	KENT WA 98032
98033, 83	KIRKLAND WA 98033
98036, 37, 46	LYNNWOOD WA 98036
98048, 51	RAVENSDALE WA 98051
98053, 73	REDMOND WA 98053
98055, 58	RENTON WA 98055
98056, 57, 59	RENTON WA 98056
98101, 20, 29, 61, 71, 91	SEATTLE WA 98101
98102, 12	SEATTLE WA 98102
98104, 34, 54, 64, 74, 84	SEATTLE WA 98104
98105, 45, 85, 95	SEATTLE WA 98105
98106, 26	SEATTLE WA 98106
98107, 17	SEATTLE WA 98107
98111, 81	SEATTLE WA 98111
98114, 44	SEATTLE WA 98144
98138, 48, 58, 88	SEATTLE WA 98148
98168, 78	SEATTLE WA 98168
98160, 77	SEATTLE WA 98177
98221, 22	EVERETT WA 98221
98230, 31	EVERETT WA 98230
98270, 71	EVERETT WA 98270
98273, 74	EVERETT WA 98273
98290, 91, 96	EVERETT WA 98290
98329, 32, 35	GIG HARBOR WA 98332
98362, 63	PORT ANGELES WA 98362
98366, 67	PORT ORCHARD WA 98366
98371, 72	PUYALLUP WA 98371
98373, 74, 75	PUYALLUP WA 98375
98352, 90	SUMNER WA 98390
98401, 77	TACOMA WA 98401
98402, 21	TACOMA WA 98402
98403, 22-24	TACOMA WA 98403
98404, 42, 43	TACOMA WA 98404
98405, 15	TACOMA WA 98405
98406, 16	TACOMA WA 98406
98408, 12, 18	TACOMA WA 98408
98444, 47	TACOMA WA 98444
98445, 46	TACOMA WA 98445
98465-67	TACOMA WA 98465
98439, 99	TACOMA WA 98499
98501, 07	OLYMPIA WA 98501
98502, 08, 12	OLYMPIA WA 98502
98503, 09, 13	OLYMPIA WA 98503
98506, 16	OLYMPIA WA 98506
98660, 63, 66	VANCOUVER WA 98660
98661, 65, 68, 85, 86	VANCOUVER WA 98661
98662, 64, 82-84	VANCOUVER WA 98662
99163, 65	PULLMAN WA 99163
99202, 12	SPOKANE WA 99202
99203, 23	SPOKANE WA 99203
99204, 19, 24	SPOKANE WA 99204
99205, 09	SPOKANE WA 99205
99206, 14, 16	SPOKANE WA 99206
99207, 17	SPOKANE WA 99207
99208, 18, 28	SPOKANE WA 99208
99336-38	KENNEWICK WA 99336
99502, 07, 18	ANCHORAGE AK 99502

Column A ZIP Codes	Column B Label to
99515, 16	ANCHORAGE AK 99515
99701, 03, 09, 12	FAIRBANKS AK 99701
99702, 05	FAIRBANKS AK 99702
99706-08	FAIRBANKS AK 99706

BILLING CODE 7710–12–C

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

1.1 Presort Process

[Amend 1.1 to incorporate a reference to package reallocation to read as follows:]

Presort is the process by which a mailer prepares mail so that it is sorted to at least the finest extent required by the standards for the rate claimed. Generally, presort is performed sequentially, from the lowest (finest) level to the highest level, to those destinations specified by standard and is completed at each level before the next level is prepared. Under standards for package reallocation for Periodicals flats and irregular parcels and Standard Mail (A) flats on pallets (see M041 and M045), mail will not necessarily be placed on the lowest (finest) level pallets. Not all presort levels are applicable in all situations.

1.2 Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Amend 1.2d and add new 1.2e to differentiate between 5-digit schemes for automation letters and 5-digit schemes for pallets and for carrier routes sacks of Periodicals flats and irregular parcels and Standard Mail (A) flats; renumber current 1.2e through 1.2m as 1.2f through n, as follows:]

d. 5-digit scheme for automation letters: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in the USPS City State File.

e. 5-digit scheme carrier routes for Periodicals flats and irregular parcels and Standard Mail (A) flats: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code zones processed by the USPS as a single scheme, as shown in L001.

* * * * *

1.3 Preparation Instructions

* * * * *

[Insert new 1.3h and i to define 5-digit/scheme sort for carrier routes sacks of Periodicals flats and irregular parcels and Standard Mail (A) flats and 5-digit/scheme sort for Periodicals flats and irregular parcels packages and Standard Mail (A) flats packages on pallets; renumber 1.3h through p as 1.3j through r, respectively, to read as follows:]

h. A 5-digit/scheme sort for sacked carrier route rate Periodicals flats and irregular parcels and Enhanced Carrier Route rate Standard Mail (A) flats yields 5-digit scheme carrier routes sacks for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum sack volume, with no further separation by 5-digit ZIP Code required. Sacks prepared for a 5-digit scheme destination that contain packages for only one of the schemed 5-digit areas are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit/scheme sort is required for carrier route rate flat-size and irregular parcel Periodicals and flat-size Enhanced Carrier Route rate Standard Mail (A) in sacks and may not be used for mail at other rates in sacks.

i. A 5-digit/scheme sort for Periodicals flats and irregular parcels and Standard Mail (A) flats prepared as packages on pallets yields 5-digit scheme pallets for those 5-digit ZIP Codes listed in L001 and 5-digit pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum pallet volume, with no further separation by 5-digit ZIP Code required. Pallets prepared for a 5-digit scheme destination that contain packages for only one of the schemed 5-digit areas are still considered 5-digit scheme sorted and are labeled accordingly. The 5-digit/scheme sort is required for flat-size and irregular parcel-size Periodicals and flat-size Enhanced Carrier Route rate Standard Mail (A) prepared as packages on pallets and may not be used for other mail prepared on pallets, except for packages of Standard Mail (A) irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates.

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M030 General Preparation Standards

M031 Labels

* * * * *

4.0 PALLET LABELS

* * * * *

4.8 Delivery Unit, SCF, DDU, and DSCF Rates

[Amend 4.8 to refer to 5-digit/scheme pallets, as follows:] If a 5-digit, 5-digit/scheme, 3-digit, or SCF pallet contains copies claimed at Periodicals delivery unit and SCF zone rates, or Standard Mail DDU and DSCF rates, as applicable, the content line of the pallet label must show the designation ''DDU/SCF,'' after the content description.

* * * * *

5.0 SECOND LINE CODES

[Amend 5.0 to include code for 5-digit scheme carrier routes sacks, as follows:] The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

Content type	*COM022*Code
* * * * *	
Scheme	SCH

(Periodicals and Standard Mail (A) 5-digit scheme carrier routes sacks and 5-digit scheme pallets only)

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

Exhibit 1.3a 3-Digit Content Identifier Numbers

[Amend Exhibit 1.3a, Periodicals (PER) and Standard (A) by inserting new 5-digit scheme carrier routes sacks and 5-digit scheme Enhanced Carrier Routes sacks categories, respectively, to read as follows:]

* * * * *

Class and mailing	CIN	Human-Readable content line
* * * * *	*	*
Periodicals (Per)		
* * * * *	*	*
PER Flats—Carrier Route:		

Class and mailing	CIN	Human-Readable content line
* * * * *	*	*
5-digit carrier routes sacks	386	PER FLTS CR-RTS.
5-digit scheme car. rts. Sacks	SCH	XXX PER FLTS CR–RTS.
* * * * *	*	*
PER Parcels—Carrier Route:		
* * * * *	*	*
5-digit carrier routes sacks	386	PER IRREG CR-RTS.
5-digit scheme car. rts. Sacks	SCH	XXX PER IRREG CR–RTS.
* * * * *	*	*
Periodicals (News)		
* * * * *	*	*
NEWS Flats—Carrier Route:		
* * * * *	*	*
5-digit carrier routes sacks	486	NEWS FLTS CR–RTS.
5-digit scheme car. rts. sacks	SCH	XXX NEWS FLTS CR–RTS.
* * * * *	*	*
NEWS Parcels—Carrier Route:		
* * * * *	*	*
5-digit carrier routes sacks	386	NEWS IRREG CR–RTS.
5-digit scheme car. rts. Sacks	SCH	XXX NEWS IRREG CR–RTS.
* * * * *	*	*
Standard Mail (A)		
* * * * *	*	*
Enhanced Carrier Route Flats—Nonautomation:		
* * * * *	*	*
5-digit carrier routes sacks	586	STD FLTS CR–RTS.
5-digit scheme car. rts. Sacks	SCH	XXX STD FLTS CR–RTS.
* * * * *	*	*

M033 Sacks And Trays

1.0 BASIC STANDARDS

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1.7 Origin/Entry SCF/Plant Sacks and Trays

[Amend the first sentence in 1.7 to refer to preparation of required 5-digit/scheme carrier routes sacks for Periodicals and Standard Mail (A), as follows:] After all required carrier route, 5-digit (and, where permitted, 5-digit/scheme), 3-digit (and, where permitted, 3-digit scheme) sacks/trays are prepared * * *

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

[Amend 5.1 and 5.2 to indicate that pallet sortation using package reallocation may not always require sorting a mailing to the finest level as follows: (note that 5.1 is as amended effective October 4, 1998, with the elimination of options to prepare flats on mixed ADC and mixed BMC pallets)]

5.1 Presort

Pallet preparation and pallet sortation are subject to the specific standards in M045. Pallet sortation is generally intended to presort the palletized portion of a mailing to at least the finest extent required for the corresponding class of mail and method of preparation. Pallet sortation is sequential from the lowest (finest) level to the highest and must be completed at each required level before the next optional or required level is prepared. Standard preparation terms and presort levels for pallets are defined in M011 and M045. For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages and bundles prepared under M045 must not be placed on mixed ADC or mixed BMC pallets. Packages and bundles that cannot be placed on pallets must prepared in sacks under the standards for the rate claimed. The standards for package reallocation (M045.5.0), an optional method of pallet preparation, are designed to retain as much mail as possible at the SCF level and may result in some packages of Periodicals flats and irregular parcels and Standard Mail (A) flats, and irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates, not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation.

5.2 Required Preparation

A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels and packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.5.0), not all mail for a required 5-digit/scheme destination is required to be on a 5-digit/scheme pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE PIECES

* * * * *

[Amend 6.3 and 6.4 to indicate that pallet sortation using package reallocation may not always require sorting a mailing to the finest level, as follows:]

6.3 Periodicals Publications

To combine more than one Periodicals publication on pallets, the mailer must merge and presort copies of all the publications into common packages to achieve the finest presort level for the combined mailing. To copalletize different Periodicals flat-size publications, the mailer must consolidate on pallets all independently sorted packages for each publication to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible. Both combining and copalletizing publications must be supported by the documentation required in M045. Preferred Periodicals may be combined with Regular Periodicals only as permitted by standard.

6.4 Standard Mail (A)

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible. At the time of mailing, the mailer must present computer-generated listings required in M045 that include a summary list consolidating the copalletized multiple mailings and a list of the contents of each pallet by ZIP Code and presort level.

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M045 Palletized Mailings

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4.0 PALLET PRESORT AND LABELING

4.1 Packages, Bundles, Sacks, or Trays

[Amend 4.1a to reflect that the 5-digit sortation is for sacks and trays; add new 4.1b requiring 5-digit/scheme sort for packages of Periodicals and Standard Mail (A) flats; and renumber 4.1b through e as 4.1c through f, as follows:]

Preparation sequence and Line 1 labeling:

a. 5-digit: required for sacks; optional for trays; for Line 1, use 5-digit ZIP Code destination of contents.

b. 5-digit/scheme: required for Periodicals and Standard Mail (A) packages and bundles; for Line 1 for 5-digit pallets, use 5-digit ZIP Code destination of contents; for Line 1 for 5-digit scheme pallets, use L001, column B.

* * * * *

4.4 Line 2

[Amend 4.4 to require ''SCHEME'' OR ''SCH'' to appear on 5-digit scheme pallets of Periodicals or Standard Mail (A), as follows:]

Line 2, class of mail (shown below, as appropriate), processing category and mail type (e.g., ''MACH,'' ''LTRS BC''), ''SCHEME'' or ''SCH'' for 5-digit scheme pallets of Periodicals or Standard Mail (A), and any processing code required by the applicable labeling list under 4.1, 4.2, and 4.3:

* * * * *

[Add section 5.0 to specify preparation requirements for package reallocation; and renumber sections 5.0 to 12.0, (as published in DMM Issue 54 incorporating changes for R–97), as 6.0 through 13.0, as follows:]

5.0 PACKAGE REALLOCATION FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

5.1 Basic Standards

Package reallocation is an optional preparation method; only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4. The software will determine if mail for an SCF service area would fall beyond the SCF level if all required 5-digit/scheme and optional 3-digit pallets are prepared. The SCF pallet level serves as a dividing line and reallocation is performed only when there is mail for the same SCF service area on both sides of the dividing line. The amount of mail required to bring the mail that would fall beyond the SCF level back to an SCF level pallet level is the minimum volume that will be reallocated, where possible.

5.2 General Reallocation Rules

Reallocation rules:

a. Package preparation is not affected by the reallocation process. Reallocate only complete packages and only the minimum number of packages necessary to create an SCF pallet meeting the minimum pallet weight. Based on the weight of individual pieces within a package, the weight of mail that is reallocated may be slightly more than the minimum volume required to create an SCF pallet.

b. Reallocate packages from the highest available pallet level possible. If it is not possible to reallocate some mail from a 3-digit pallet first; then attempt to eliminate a 3-digit pallet and reallocate all mail from that pallet to create an SCF pallet; if mail cannot be reallocated from a 3-digit pallet, then attempt to reallocate some mail from a 5-digit/scheme pallet.

c. The reallocation process may result in the elimination of a 3-digit pallet to create an SCF pallet, but a 5-digit/scheme pallet may not be eliminated in order to create an SCF pallet.

d. When reallocating mail to create an SCF pallet, reallocate mail from only one pallet. This may be accomplished by reallocating a portion of a 3-digit pallet, reallocating all mail from a 3-digit pallet, or reallocating a portion of a 5-digit/scheme pallet following the sequence in 5.2b.

e. Mailers may use any minimum pallet weight(s) permitted by DMM standards and may use different minimum weights for different pallet levels in conjunction with package reallocation.

5.3 Reallocation of Packages if Optional 3-Digit Pallets are Prepared

Reallocation rules:

a. Attempt to identify a 3-digit pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the SCF level back to the SCF level without eliminating the pallet. A sufficient volume of mail must remain on the 3-digit pallet after reallocation to meet the 3-digit pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 3-digit pallet of adequate weight is available, create an SCF pallet by combining the reallocated mail from the 3-digit pallet with the mail that would have fallen through the SCF level.

b. If no single 3-digit pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in the previous step, then eliminate one 3-digit pallet and reallocate all of the mail to create an SCF pallet by combining it with the mail that would have fallen through the SCF level. The result will be that the software will not prepare one 3-digit pallet for the SCF service area if it is detrimental to the SCF pallet.

c. If there are no 3-digit pallets, attempt to identify a 5-digit/scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall through the SCF level back to the SCF level. A sufficient volume of mail must remain on the 5-digit/scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit/scheme pallet of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would have fallen through the SCF level.

d. If no single 5-digit/scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in c, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack.

5.4 Reallocation of Packages if Optional 3-Digit Pallets are Not Prepared

Reallocation rules:

a. Attempt to identify a 5-digit/scheme pallet of adequate weight to support reallocation of one or more packages to bring the mail that would fall through the SCF level back to the SCF level. A sufficient volume of mail must remain on the 5-digit/scheme pallet after reallocation to meet the pallet weight minimum established by the mailer in compliance with applicable DMM standards. If a 5-digit/scheme pallet of adequate weight is available, create an SCF pallet by combining the reallocated packages with the mail that would have fallen through the SCF level.

b. If no single 5-digit/scheme pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in a, then no packages will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the appropriate level pallet (ADC or BMC) or in the appropriate level sack.

5.5 Documentation

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

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M200 Periodicals (Nonautomation)

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3.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

3.1 Sack Preparation

[Amend 3.1b to reflect that the 5-digit/scheme carrier routes sort replaces 5-digit carrier routes sort for flats and irregular parcels, as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. 5-digit/scheme carrier routes (carrier route packages only): required at 24 pieces, optional with one six-piece package minimum except under 1.5; for Line 1 for 5-digit carrier routes sacks, use 5-digit ZIP Code destination of contents; for Line 1 for 5-digit scheme carrier routes sacks, use L001, column B.

* * * * *

3.2 Sack Line 2

[Add new 3.2e for 5-digit scheme carrier routes sacks; and renumber 3.2e through h as 3.2f through i, as follows:]

* * * * *

e. 5-digit scheme car. rts.: ''SCHEME''

* * * * *

M600 Standard Mail (Nonautomation)

* * * * *

M620 Enhanced Carrier Route Standard Mail

* * * * *

4.0 SACK PREPARATION-FLAT-SIZE PIECES AND IRREGULAR PARCELS

* * * * *

4.2 Sack Preparation

[Amend 4.2b and add new 4.2c, as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. 5-digit carrier routes: required (no minimum); for irregular parcels; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

c. 5-digit/scheme carrier routes: required (no minimum) for flats; for Line 1, for 5-digit sacks, use 5-digit ZIP Code destination of packages; for Line 1 for 5-digit scheme sacks, use L001, column B.

4.3 Sack Line 2

[Add new 4.3e for 5-digit scheme carrier routes sacks, as follows:]

* * * * *

e. 5-digit scheme car. rts.: ''SCHEME''

* * * * *

P Postage and Payment Methods

P000 Basic Information:

* * * * *

P012 Documentation

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2.0 STANDARDIZED DOCUMENTATION-FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

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2.2 Format and Content

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d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

[Amend d(4) to add standards for identifying SCF pallets created as a result of package reallocation by adding the following to the end of the section:]

(4) * * * Document SCF pallets created as a result of package reallocation under M045.5.0 on the USPS Qualification Report by designating the protected SCF pallet with an identifier of ''PSCF.'' This identifier is only required to appear on the USPS Qualification Report; it is not required to appear on pallet labels or on any other mailing documentation.

* * * * *

2.4 Sortation Level

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below: [Add new ''PSCF'' indicator to identify SCF pallets created as a result of package reallocation under M045.5.0, as follows:]

Sortation level	Abbreviation
* * * * *	
SCF (pallets)	N/A.
SCF (pallets created from package reallocation).	PSCF.
* * * * *	

Neva R. Watson,

Attorney, Office of Legal Policy.

[FR Doc. 98–28803 Filed 10–28–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6179–6]

Michigan: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Michigan. 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 on this action, 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 notice of 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 on this proposed rule must be received on or before November 30, 1998.

ADDRESSES: Send written comments to: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604. Copies of the Michigan program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Michigan Department of Environmental Quality, 608 W. Allegan, Hannah Building, Lansing, Michigan. Contact: Ms. Ronda Blayer, phone: (517) 353–9548; and EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. Contact: Ms. Judy Feigler, phone: (312) 886–4179.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: October 9, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region 5.

[FR Doc. 98–28723 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021263–8263–01; I.D. 090898D]

RIN 0648–AK12

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore/Offshore Allocations of Pollock and Pacific Cod Total Allowable Catch

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 51 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). These amendments would allocate pollock in the BSAI and pollock and Pacific cod in the GOA between inshore and offshore industry components for the years 1999 through 2001. NMFS proposes other associated regulatory measures as well. The amendments and the proposed implementing regulations were submitted by the North Pacific Fishery Management Council (Council) and are intended to promote the socioeconomic goals and objectives of the Council and the FMPs.

DATES: Comments on the proposed rule must be received on or before December 14, 1998.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 51/51 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 51/51 are available from the North Pacific Fishery Management Council at 605 W. 4th Ave., Room 306, Anchorage, AK 99501, telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and GOA under the FMPs. The Council prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA and BSAI appear at 50 CFR parts 600 and 679.

BSAI Amendment 51, if approved, would establish the following allocations and management measures for the years 1999 through 2001: (1) The BSAI pollock total allowable catch (TAC), after subtraction of reserves, would be allocated 61 percent to vessels catching pollock for processing by the offshore component and 39 percent to vessels catching pollock for processing by the inshore component; (2) a portion of the inshore component Bering Sea B season allocation equal to 2.5 percent of the BSAI pollock TAC, after subtraction of reserves, would be set aside for harvest by catcher vessels under 125 ft (38.1 m) length overall (LOA) and would become available on or about August 25 of each year; and (3) all vessels harvesting pollock for processing by the offshore component

would be prohibited from fishing inside the Catcher Vessel Operational Area (CVOA) during the B season (September 1 to November 1) until the date that NMFS closes the inshore component B season allocation to directed fishing.

GOA Amendment 51 would extend the current allocations of pollock and Pacific cod TACs for the years 1999 through 2001. The pollock TAC in the GOA would continue to be allocated 100 percent to vessels catching pollock for processing by the inshore component, and the Pacific cod TAC in the GOA would continue to be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component.

The Council has submitted Amendments 51/51 for Secretarial review and a Notice of Availability of the FMP amendments was published in the **Federal Register** on September 15, 1998 (63 FR 49540), with comments on the FMP amendments invited through November 16, 1998. Comments may address the FMP amendments, the proposed rule, or both, but must be received by November 16, 1998, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by November 16, 1998, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decisions on the FMP amendments.

A major concern identified during the preliminary review of Amendments 51/51 is that the economic analysis submitted by the Council does not provide a basis upon which to draw unambiguous conclusions about the probable net economic benefits to the Nation of the proposed amendments. The reasons for this deficiency are treated in considerable detail in the document. They pertain to basic data limitations which make conversion from gross to net economic measures impossible. Completion of the preliminary review with publication of the proposed rule for Amendments 51/51 does not mean that either of these two amendments will be approved. NMFS invites comment on the consistency of the amendments and the proposed regulations with the Magnuson-Stevens Act, the national standards, and other applicable laws. Comments are specifically requested on the adequacy of the analysis to support findings of compliance with national standards 2 (scientific information), 4 (allocations), 5 (efficiency), 7 (costs and benefits), 8 (fishing communities), and 10 (safety of life at sea). Information and analysis that bolster or contradict the conclusions in any of the supporting documents are also welcome.

Reconciliation of Amendments 51/51 with the American Fisheries Act

On October 21, 1998, the President signed into law the American Fisheries Act (AFA), which, besides affecting Amendments 51/51 in other ways, allocates BSAI pollock differently than BSAI FMP Amendment 51 and these proposed regulations.

Specifically, section 206 of the AFA states:

(a) Pollock Community Development Quota.—Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) Inshore/Offshore.—Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

Because this new statute was signed into law only a few days ago, the Council has not had the opportunity to reconcile Amendments 51/51 and the proposed regulations with the new statute. The Council has scheduled a special meeting to examine and respond to the mandates of the AFA and to address management measures that may be necessary to protect endangered Steller sea lions. This meeting will be held in Anchorage, Alaska, on November 10–13, 1998. Additional information on this special meeting is available from the Council (see **ADDRESSES**) and on the Council's web site: http://www.fakr.noaa.gov/npfmc/npfmc.htm.

Because the Council, at its November meeting, will address reconciliation of Amendments 51/51 and this proposed rule with the AFA, NMFS is proceeding with the publication of this proposed rule unchanged so that such regulatory provisions that are unaffected by the AFA as inshore/offshore allocations of pollock and Pacific cod in the GOA, establishment of a CVOA in the Bering Sea, and technical changes to the existing regulations can proceed in a timely manner. NMFS will reconcile any inconsistencies between Amendments 51/51 (including their proposed implementing regulations) and the AFA at the time of approval/disapproval of the Amendments and in the final rule implementing them after consultation with the Council at its November 1998 meeting and after the public has had opportunity to comment.

History of Inshore/Offshore Allocations

Amendments 18/23

The first inshore/offshore allocations of pollock and Pacific cod were established in 1992 under Amendments 18/23 to the FMPs. The precipitating event that led to the development of inshore/offshore allocations began in early 1989 when the rapid harvest of the GOA pollock TAC by several large factory trawlers forced an early closure of the GOA pollock fishery and prevented inshore catcher vessels and processors from realizing their anticipated economic benefit from the pollock fishery later in the year. At the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider specific allocations of fish for processing by the inshore and offshore components of the fishery to prevent future preemption of resources by one component of the industry. The Council considered the request and the impacts on coastal community development and stability of the fisheries and prepared Amendments 18/23.

After 2 years of analysis, review, and debate on the inshore/offshore issue, the Council took final action on Amendments 18/23 in June 1991. Amendment 18 to the BSAI FMP, as adopted by the Council, established a Community Development Quota (CDQ) program and set aside one half of the pollock reserve (7.5 percent of the BSAI pollock TAC) for CDQ harvest, allocated 35 percent of the remaining BSAI pollock TAC to vessels catching pollock for processing by the inshore component and 65 percent of the remaining BSAI pollock TAC to vessels catching pollock for processing by the offshore component in the first year of the allocation, with the inshore allocation increasing to 40 percent in the second year, and 45 percent in the third and fourth years of the amendment, respectively. Amendment 18 also established a catcher vessel operational area (CVOA) from which

catcher processors and motherships would be excluded throughout the fishing year when operating in a directed fishery for pollock.

Amendment 23 to the GOA FMP, as adopted by the Council, allocated 100 percent of the GOA pollock TAC to vessels catching pollock for processing by the inshore component. Amendment 23 also allocated 90 percent of the GOA Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component, and 10 percent of the GOA Pacific cod TAC to vessels catching Pacific cod for processing by the offshore component.

NMFS's review of the amendments began on December 1, 1991. On March 4, 1992, NMFS approved Amendment 23 to the GOA FMP. On the same date, NMFS partially disapproved Amendment 18 to the BSAI FMP by approving the 35/65 allocation split for 1992 but disapproving the increased inshore component allocations for 1993–1995.

In his March 4, 1992, letter notifying the Council of the approval of Amendment 23 and partial disapproval of Amendment 18, the Under Secretary for Oceans and Atmosphere and Administrator of NOAA (Administrator) stated that NOAA was not opposed to the concept of an allocation between onshore and offshore interests as an interim measure pending development of a solution to overcapitalization—ideally, a market-based solution. NMFS's disapproval of the BSAI pollock allocations for 1993 through 1995 was based in part on a cost/benefit analysis prepared by NMFS that indicated a significant net economic loss to the Nation under the proposed allocations for years 1993 through 1995. The Administrator urged the Council to work as expeditiously as possible toward some other method of allocating fish than either direct competition among participants within an open access fishery, or direct government intervention. Meanwhile, he noted, preventing preemption by one fleet of another, safeguarding capital investments, protecting coastal communities that are dependent on a local fleet, and encouraging fuller utilization of harvested fish are desirable objectives that are provided for under the Magnuson-Stevens Act.

At its April 1992 meeting, the Council considered NMFS's actions and decided to revise Amendment 18. The Council supplemented its previous analysis of allocation alternatives. At a special meeting to consider this issue in August 1992, the Council again considered the comments of its advisory bodies and the public, adopted its preferred alternative, and submitted it to NMFS as revised Amendment 18. As adopted by the Council, revised Amendment 18 would have established a 35/65 inshore/offshore allocation for 1993, the first year of the revised amendment. The inshore allocation would then have increased to 37.5 percent for 1994 and 1995, the second and third years of the revised amendment. In addition, revised Amendment 18 proposed two changes to the CVOA. Under revised Amendment 18, the CVOA would take effect only during the pollock B Season (September 1 to November 1), and motherships (and catcher processors operating as motherships) were allowed to receive deliveries and process pollock inside the CVOA as long as they did not engage in directed fishing for pollock themselves. In September 1992, the Council submitted revised Amendment 18 to NMFS for review and approval.

On November 23, 1992, after careful consideration of the revised amendment, public comments, the record developed by the Council, and the analysis of the potential effects of the proposed amendment, NMFS partially disapproved revised Amendment 18. NMFS approved pollock allocations of 35 percent and 65 percent for vessels catching pollock for processing by the inshore and offshore components, respectively, for the years 1993 through 1995, and the establishment of the CVOA. However, NMFS disapproved the 2.5 percent increase for 1994 and 1995, finding that the sole purpose of the increased allocation to the inshore component during those years was economic, and therefore, in violation of national standards 4, 5, and 7 of Magnuson-Stevens Act, as well as Executive Order 12291. The final rule implementing these decisions was published on December 24, 1992 (57 FR 61326).

Amendments 38 and 40

When the Council developed its original inshore/offshore amendments, it stipulated that Amendments 18/23 would expire on December 31, 1995, with the intention that by December 31, 1995, it would have adopted and NMFS would have approved a more comprehensive, long-term management program to address the overcapitalization and allocation problems facing the industry, not only for pollock and Pacific cod, but for all the groundfish and crab fisheries under the Council's authority.

By 1995, the Council had made some progress on its long-term plan. For example, in June 1995, it adopted license-limitation programs for the groundfish and crab fisheries. However, the Council estimated that it would take 2 or 3 more years to develop and implement a comprehensive rationalization plan that could more directly address these allocation issues. Consequently, the Council decided it would be necessary to extend the provisions of Amendments 18/23 for an additional 3 years to maintain stability in the industry, facilitate further development of the comprehensive management plan, and allow for realization of the goals and objectives of the pollock CDQ program. In making this decision, the Council continued the mandate it established for itself in 1992 when it recognized that a more permanent solution to overcapacity and preemption was needed.

The Council also determined that if the provisions of Amendments 18/23 expired, the fishery would return to the ''free-for-all'' state that existed before Amendments 18/23, and the inshore sector again would be faced with the threat of preemption by the large and efficient offshore sector. Thus, the Council began the process to extend the provisions of Amendments 18/23. The provisions of Amendment 18 became the basis for Amendment 38 to the BSAI FMP, and the provisions of Amendment 23 became the basis for Amendment 40 to the GOA FMP.

At its meeting in June 1995, the Council voted unanimously to adopt Amendments 38/40 through December 31, 1998, with two changes from Amendments 18/23. First, Amendment 38 decreased the size of the CVOA by moving the western boundary of the area 30 minutes to the east. Second, it allowed catcher processors to engage in directed fishing for pollock inside the CVOA if the inshore component pollock allocation was closed to directed fishing and the offshore component allocation was still open to directed fishing. A proposed rule to implement Amendments 38/40 was published in the **Federal Register** on September 18, 1995 (60 FR 48087). NMFS approved Amendments 38/40 on November 28, 1995, and a final rule to implement Amendments 38/40 was published in the **Federal Register** on December 12, 1995 (60 FR 63654).

Council Development of Amendments 51/51

In April 1997, recognizing that a comprehensive rationalization plan to address overcapitalization and preemption issues could not be adopted and implemented prior to the expiration of Amendments 38/40, the Council began development of a third set of inshore/offshore FMP amendments. These amendments became identified as

Amendments 51/51. In June 1997, the Council requested information in the form of pollock industry profiles that enabled it to examine the evolution and current status of the BSAI pollock fisheries from 1991 through 1996. At that time, the Council also decided to split the reauthorization of the pollock CDQ program in the BSAI and the reauthorization of BSAI inshore/offshore pollock allocations into separate FMP amendments. Under BSAI Amendments 18 and 38, the CDQ program had been included with the inshore/offshore pollock allocations. However, BSAI Amendment 51 only addresses inshore/offshore pollock allocations. The Council adopted a separate FMP amendment, Amendment 45, to extend the BSAI pollock CDQ program on a permanent basis. A proposed rule to implement Amendment 45 was published in the **Federal Register** on September 3, 1998 (63 FR 46993).

At its September 1997 meeting, after examination of the industry profiles prepared by Council staff, consideration of public comment, and Council discussion, the Council adopted the following inshore/offshore problem statements for the BSAI and GOA:

BSAI Problem Statement: The current inshore/offshore allocation expires at the end of 1998. The Council thus faces an inevitable allocation decision regarding the best use of the pollock resource. Many of the issues that originally prompted the Council to adopt an inshore/offshore allocation (e.g., concerns for preemption, coastal community dependency, and stability), resurface with the specter of expiration of the current allocation.

The current allocation was made on the basis of several critical assumptions including utilization rates, foreign ownership, the balance between social gains and assumed economic losses to the nation, and the nature of progress on the Council's Comprehensive Rationalization Program (CRP) initiative. Many of these assumptions have not been revisited since approval of the original amendment. It is not clear that these assumptions hold or that the Council and the nation are well-served by continuing to manage the pollock fishery without a reexamination of allocation options. The Magnuson-Stevens Act presents the Council with a new source of guidance to evaluate national benefits. In the context of Council deliberations over Inshore-Offshore 3, this includes enhanced statutory emphasis on increased utilization, reduction of waste, and fishing communities.

There have also been substantial changes in the structure and characteristics of the affected industry sectors including number of operations, comparative utilization rates, and outmigration and concentration of capital. These changes are associated with several issues, including: optimization of food production resulting from wide differences in pollock utilization; shares of pollock harvesting and processing; discards of usable pollock protein; reliance on pollock by fishing communities; and decreases in the total allowable catch of pollock. In addition, changes in fishing patterns could lead to local depletion of pollock stocks or other behavioral impacts to stocks which may negatively impact Steller sea lions and other ecosystem components dependent upon stock availability during critical seasons.

Therefore, the problem facing the Council is to identify what allocation would best serve to ensure compliance with the new Act and address the issues identified above.

GOA Problem Statement: Allowing the current Gulf of Alaska Inshore/Offshore allocative regime to expire December 31, 1998, would allow the same preemption of resident fleets by factory trawlers in the pollock and Pacific cod fisheries which occurred in 1989. It was this dramatic preemption which triggered the original proposal for an inshore/offshore allocation. In 1989, there was still pollock available in the Bering Sea when the preemption occurred when vessels moved into the Gulf to take advantage of fish with high roe content.

A rollover of the current Gulf of Alaska inshore/offshore program which allocates 100 percent of the pollock and 90 percent of the Pacific cod to inshore operations is a proactive action to prevent the reoccurrence of the original problem.

Alternatives Considered by the Council

In addition to the development of the inshore/offshore problem statements, the Council adopted a complex set of inshore/offshore alternatives at its September 1997 meeting. During the course of the next several Council meetings, these evolved into five basic alternatives and included various suboptions within each alternative. However, for the GOA, the Council considered only Alternatives 1 and 2.

Alternative 1: No action. The existing BSAI and GOA inshore/offshore allocations would expire at the end of 1998.

Alternative 2: Reauthorize existing BSAI and GOA inshore/offshore allocations without change. This alternative includes suboptions for a 1-year and 3-year effective period for the amendment.

Alternative 3: Adopt new BSAI pollock allocations within the following ranges. This alternative includes a range of allocations among three sectors: Inshore sector 25 to 45 percent, ''true'' motherships 5 to 15 percent, and offshore sector 40 to 70 percent. The analysis defines ''true'' motherships as offshore motherships that process but do not harvest groundfish. This alternative includes options that assign ''true'' motherships (and their allocation percentage) to either the inshore or offshore sectors, or establish a separate ''true'' mothership allocation. Additional options establish a set-aside of 40 to 60 percent of the inshore and ''true'' mothership sector allocations for small catcher vessels (defined as catcher vessels less than 125 ft (38.1 m) LOA), and a set-aside of 9 to 15 percent of the offshore quota for catcher vessels delivering to catcher processors.

Alternative 4: ''Harvester's Choice'' for small catcher vessels. This alternative establishes a stand alone or separate allocation for small catcher vessels (defined as catcher vessels less than 125 ft (38.1 m) LOA). This allocation is equal to 40 to 60 percent of the inshore quota, plus 9 to 15 percent of the offshore quota, plus 100 percent of the ''true'' mothership quota, depending on the sector allocations established under Alternative 3. Small catcher vessels are free to deliver their allocation to any processing sector and the processing sectors compete among themselves for the opportunity to process pollock harvested by small catcher vessels.

Alternative 5: ''Harvester's Choice'' for catcher vessels 155 ft (47.2 m) LOA and shorter. This alternative is the same as Alternative 4 except that the catcher vessel allocation is available to all catcher vessels 155 ft (47.2 m) LOA and shorter.

Also included as options under Alternative 2 through 5 were four CVOA suboptions: (1) Retain the CVOA as currently defined, (2) prohibit catcher processors from operating inside the CVOA during both pollock seasons, (3) prohibit motherships from operating inside the CVOA during either pollock A season or pollock B season but not both, and (4) repeal the CVOA.

Finally, the Council considered two expiration date options for Alternatives 3 through 5: (1) The selected alternative(s) do not expire, but serve as interim measures until the Council's comprehensive rationalization plan has been completed, and (2) the selected alternative(s) remain in effect for a 3-year period.

Council Adoption of BSAI Amendment 51

At its June 1998 meeting, after examination of the EA/RIR/IRFA, consideration of the recommendations of its Advisory Panel (AP) and Scientific and Statistical Committee (SSC), and after extensive public testimony and deliberation, the Council voted 7–4 to adopt Amendment 51 to the BSAI with the following changes from the allocation scheme established under Amendment 38: (1) Shift four percent of the BSAI pollock TAC, after subtraction of reserves, would be shifted to the inshore component resulting in a 39/61

inshore/offshore allocation split; (2) set aside a portion of the inshore component Bering Sea B season allocation, equal to 2.5 percent of the BSAI pollock TAC after subtraction of reserves, for small catcher vessels, and to become available on or about August 25 of each year; and (3) prohibit catcher vessels delivering to the offshore component from fishing inside the CVOA during the B season from September 1 until the inshore component B season allocation is closed to directed fishing. Amendment 51 would remain in effect for the years 1999 through 2001.

BSAI pollock allocation. Under BSAI Amendment 51, the BSAI pollock TAC, after subtraction of reserves, would be allocated 61 percent to vessels catching pollock for processing by the offshore component and 39 percent to vessels catching pollock for processing by the inshore component. In developing this preferred alternative, much of the Council discussion focused on a last minute proposal by major inshore and offshore industry representatives that would have established a 3-way allocation split: 40 percent inshore, 50.5 percent offshore, and 9.5 percent to ''true'' motherships. A separate category for ''true'' motherships would have enabled the remaining factory trawlers in the offshore sector to establish a harvesters cooperative similar to the cooperative operating in the hake fishery off the Pacific coast. However, several Council members expressed unease with the cooperative idea and uncertainty about the potential spillover effects into other fisheries. As a result, the Council rejected the industry agreement and chose to maintain a 2-way allocation split.

In rejecting the industry's 3-way split proposal, the Council noted that the industry proposal came very late in the process and that many affected members of the public did not have adequate time to analyze and comment on it. While the statutory moratorium on the development of new individual fishing quota (IFQ) programs does not prohibit the Council from adopting a 3-way allocation split, some Council members expressed concern that adopting a 3-way allocation split for the explicit purpose of facilitating a harvesters cooperative could be seen as violating the intent of the Congressional moratorium on IFQ programs.

In adopting its preferred allocation alternative for BSAI Amendment 51, the Council indicated that a shift of pollock TAC to the inshore component was warranted for several reasons. First, the Council noted that the analysis prepared for Amendments 38/40 concluded that the expected net losses to the Nation's economy were probably overstated in the cost/benefit analysis prepared for Amendments 18/23. A majority of the Council believed that the rationale for partially disapproving the original Amendment 18 in 1991 no longer was valid and that the allocation proposed under Amendment 51 was closer to the Council's original intent under Amendment 18. Second, the Council noted that the EA/RIR/IRFA prepared for Amendments 51/51 concludes that the inshore sector realizes greater gross revenues per metric ton of pollock than the offshore sector due to the higher recovery rates achieved by the inshore sector. The analysis generates gross revenue estimates for the various processing components using 1996 data and concludes that 4 percent of the BSAI pollock TAC (the amount shifted under Amendment 51) would generate the following gross revenues if processed by each of the following industry components, respectively: Inshore component $24.1 million; mothership component, $21.4 million; offshore component $21.7 million. Third, the Council noted that coastal communities in Alaska where onshore processors are located are disproportionately dependent on pollock processing compared to the communities in which offshore processors are based.

Small catcher vessel set-aside. Over the course of developing Amendments 51/51 the Council received substantial testimony from owners and operators of smaller catcher boats who indicated that, under the current BSAI inshore/offshore regime, their share of the catch was eroding constantly. The industry sector profiles prepared as part of the EA/RIR/IRFA also confirmed that the share of the BSAI pollock harvest taken by catcher vessels under 125 ft (38.1 m) LOA has eroded since 1991. The percentage of total catcher vessel pollock harvest taken by catcher vessels under 125 ft (38.1 m) LOA declined from 65 percent in 1991 to 42 percent in 1996 despite the fact that the number of catcher vessels under 125 ft (38.1 m) LOA increased from 71 to 89 during the same time period. Recognizing this trend, and the fact that many of these small catcher vessels are considered ''small entities'' under the Regulatory Flexibility Act (RFA), the Council examined a range of options to preserve the pollock harvest share of smaller catcher vessels as outlined above.

Most of the alternatives considered by the Council included TAC set-asides for small catcher vessels that would be available for harvest during the A and B pollock seasons. However, NMFS informed the Council that the agency's TAC monitoring system would be unable to monitor TAC set-asides based on vessel size without major changes in recordkeeping and reporting requirements that could not be implemented by January 1999. Based on this constraint, and on the advice of its Advisory Panel, the Council chose to establish a small catcher vessel set-aside that would be available prior to the pollock B season. Because only small catcher vessels delivering to inshore processors would be allowed to fish during this period, recordkeeping and reporting changes would not be required to monitor the set-aside.

Based on this information, the Council voted to set aside a portion of the inshore component Bering Sea B season allocation for small catcher vessels (defined as catcher vessels under 125 ft (38.1 m) LOA). The amount of this set-aside would be equal to 2.5 percent of the BSAI pollock TAC after subtraction reserves. This small vessel set-aside would become available on or about August 25 of each year with the actual opening date announced by NMFS in the **Federal Register** on an annual basis. NMFS would base the actual start date for the set-aside fishery on the amount of the set-aside, the projected harvest rate, and the number of small catcher vessels expected to participate so that overharvest or underharvest of the set-aside is minimized.

While the amount of the set-aside would be equal to 2.5 percent of the BSAI TAC after subtraction of reserves, the set-aside would be available in the Bering Sea only, and would be taken out of the inshore component B season allocation. The effect of this action would be to allow small catcher vessels to begin fishing for the inshore component B season allocation on or about August 25, effectively giving them a 6-day ''head start'' over catcher vessels that are 125 ft (38.1 m) LOA or longer. Any underages or overages of the set-aside would be added to or subtracted from the amount available to the inshore component Bering Sea B season.

Exclusion of offshore catcher vessels from the CVOA. BSAI Amendment 51, if approved, would exclude all vessels engaged in directed fishing for pollock for processing by the offshore component from fishing inside the CVOA during the B season from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing. The Council, in adopting this change, noted that the proportion of catch taken by mothership operations has increased at the expense of catcher processors over

the period examined by the EA/RIR/IRFA (1991 through 1996). Under current regulations, catcher vessels that deliver pollock to either the inshore or offshore component for processing may operate within the CVOA. Additionally, vessels in the offshore component that do not catch groundfish but do process pollock, such as motherships, may operate within the CVOA. Although these regulations permit a catcher processor to operate as a mothership within the CVOA, catcher processors typically catch pollock in a directed fishery during the B season and are therefore excluded from the CVOA. Catcher vessels that deliver their catch to offshore catcher processors must operate within relatively close proximity to their processor because codends, once retrieved, cannot be towed for significant distances without damaging the pollock. On the other hand, motherships can operate where their offshore catcher vessels are fishing, either inside or outside the CVOA. As a result of the current regulations, mothership operations may have a competitive advantage over catcher processors because they have the opportunity to operate inside the CVOA during the B season where pollock may be more abundant. By excluding all catcher vessels that harvest pollock for processing by the offshore component in the CVOA during the B season, the Council sought to establish a more level playing field between the two elements of the offshore component—catcher processors and motherships.

Council Adoption of GOA Amendment 51

After receiving the recommendations of the AP, SSC and public testimony, the Council voted unanimously to extend the provisions of GOA Amendment 40 without change for an additional 3 years. GOA Amendment 51, if approved, would allocate 100 percent of the GOA pollock TAC and 90 percent of the GOA Pacific cod TAC to vessels catching pollock and Pacific cod for processing by the inshore component. Ten percent of the GOA Pacific cod TAC would be allocated to vessels catching Pacific cod for processing by the offshore component. The Council believed that an extension of the existing allocation percentages would maintain stability in the GOA pollock and Pacific cod fisheries and would prevent a reoccurrence of the preemption by large factory trawlers that led to the original inshore/offshore amendments.

Technical Changes That Will Be Made by This Proposed Rule

In addition to the basic regulatory provisions contained in Amendments 51/51, this proposed rule would make two technical changes to the existing regulatory definitions of the inshore and offshore components. First, definitions of the inshore and offshore components at 50 CFR 679.2 would be revised to indicate that all groundfish processors operating in the BSAI or GOA must be identified as belonging to either the inshore or offshore component regardless of whether they process pollock harvested in a directed fishery for pollock in the BSAI or GOA, or Pacific cod harvested in a directed fishery for Pacific cod in the GOA. This change appears to be necessary because NMFS must assign all catch of pollock in the BSAI and GOA and all catch of Pacific cod in the GOA to either the inshore or offshore components when the catch of those species is taken in a directed fishery for pollock or Pacific cod, and when it is taken as incidental catch in fisheries directed at other species. Second, the inshore component definition would be revised to eliminate obsolete language defining how NMFS determines a single geographic location for inshore floating processors. This language no longer is necessary because NMFS now requires that processors identify themselves as inshore or offshore when applying for Federal groundfish permits.

Classification

At this time, NMFS has not determined that Amendments 51/51 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this action that describes the management background, the purpose and need for action, the management action alternatives, and the economic and social impacts of the alternatives. For BSAI Amendment 51, the RIR evaluated a range of alternatives from a return to pre-1992 ''open access'' management, through retention of the current allocation scheme, to a series of incremental reallocations of TAC among the several BSAI industry components. For GOA Amendment 51, the RIR evaluated two alternatives, a return to pre-1992 ''open access'' management, and retention of the current allocation scheme.

The Council prepared an IRFA as part of the RIR that addresses the economic impacts of the preferred alternative on small entities. The IRFA concludes that BSAI Amendment 51 would have a significant economic impact on a substantial number of small entities in the BSAI, but GOA Amendment 51 would not have a significant economic impact on a substantial number of small entities in the GOA. A copy of the IRFA is available from the Council (See **ADDRESSES**).

The IRFA determines that the only small businesses that participate directly in the BSAI pollock fishery are independent catcher vessels. All other business entities that participate directly in the BSAI pollock fishery (catcher processors, motherships, shoreside processors, and processor-affiliated catcher vessels) are considered large entities under the RFA. Independent catcher vessels participate in both sectors of the BSAI pollock fishery. Of the 49 independent catcher vessels estimated to be small entities, 45 are under 125 ft (38.1 m) LOA and 4 are 125 ft (38.1 m) LOA or larger. The estimated numbers of catcher vessels that participated in the 1996 BSAI pollock fishery by sector, vessel size, and small or large entity status are displayed in the following table:

Catcher vessel size and sector	Small entities		Large entities	
	<125′	≥125′	<125′	≥125′
Inshore sector	35	2	17	15
Offshore sector	9	2	16	0
Both sectors	1	0	12	9
Total	45	4	45	24

If implemented, BSAI Amendment 51 presents three types of impacts on independent catcher vessels. First, the allocation shift itself would impact catcher vessels participating in both sectors. Second, the small vessel TAC set-aside would have impacts on catcher vessels of all sizes. Finally, the exclusion of offshore catcher vessels from the CVOA would impact catcher vessels delivering to the offshore sector. Each of these impacts is summarized below.

Impacts of the Allocation Shift on Season Lengths. Quantitative predictions about the impacts of the Council's preferred alternative on net revenues of catcher vessels are impossible because information on gross and net revenues for individual catcher vessels is not available. However, using data from 1997, the most recent full year for which data are available, it is possible to estimate how BSAI pollock fishing season lengths would have been affected under the Council's preferred alternative if it had been in effect in 1997.

If BSAI Amendment 51 had been in place during 1997, inshore catcher vessels equal to or longer than 125 ft (38.1 m) would have gained an additional 3 fishing days during the A season (January 20 to April 1) and would have lost one fishing day during the B season for a net gain of 2 fishing days. Two small entities fall into this category. Offshore catcher vessels over 125 ft (38.1 m) LOA would have lost 2 fishing days during the A season (January 25 to April 1) and 2 fishing days during the B season for a net loss of 4 fishing days or 7.1 percent of their total fishing days compared to the actual 1997 fishery. Two small entities fall into this category. The value of a fishing day during the A season may be marginally greater than the value of a fishing day during the B season because the catchability of pollock in the BSAI is generally greater during the A season, and most processors give fishermen a monetary bonus based on proceeds from the roe season.

As noted above, 45 of the 49 catcher vessel small entities that participated in the BSAI pollock fishery in 1996 are under 125 ft (38.1 m). If BSAI Amendment 51 had been in place during 1997, inshore catcher vessels under 125 ft (38.1 m) LOA would have gained an additional 3 fishing days during the A season, would have lost 1 fishing day during the B season and would have gained 6 fishing days during the small catcher vessel set-aside fishery for a net gain of 8 fishing days. Thirty-five small entities fall into this category and one small entity delivers to both sectors. All of these small entities will benefit from the Council's preferred alternative. Offshore catcher boats under 125 ft (38.1 m) LOA would have lost 2 fishing days during both the A season and B season, and would have gained approximately 5 fishing days during the small catcher vessel set-aside fishery, assuming they were able to secure inshore markets, for a net gain of 1 fishing day. Nine small entities fall into this category. Because offshore catcher vessels would be excluded from the CVOA during the B season, these catcher vessels would lose at least one fishing day while they transit to waters outside the CVOA prior to the start of the B season and, therefore, would be unable to take advantage of the entire 6-day set-aside fishery.

Estimating the effects of the small catcher vessel set-aside. A set-aside fishery for small catcher vessels has never been conducted in the BSAI or GOA groundfish fisheries. Consequently, it is difficult to project the costs and benefits of such a fishery on small entities. Anecdotal information from inshore processors indicates that all of the inshore processors in the BSAI intend to participate in this fishery and that they intend to operate their plants at full capacity. This suggests that the 25 offshore catcher vessels under 125 ft (38.1 m) (9 of which are small entities) may be able to secure inshore markets for this 6-day fishery. However, offshore catcher vessels may not be able to participate in the entire set-aside fishery if they intend to be in position to begin fishing for their offshore processors outside the CVOA beginning September 1. Inshore processors also have stated that they may use large catcher vessels as tenders to ferry pollock from the fishing grounds to the plants. The use of tenders would enable small catcher vessels to fish non-stop during the opening, although they would likely receive a lower price for fish transferred to large catcher vessels at sea than for fish delivered to a plant. At present, projecting the net revenues to the small catcher vessel fleet as a result of this set-aside is impossible because the prices that inshore processors are willing to pay for these fish are unknown. Inshore processors may have little incentive to bargain with small catcher vessels because any unharvested quota from this fishery would become immediately available to all inshore catcher vessels on September 1. Because inshore processors own (or have financial affiliations with) most of the large inshore catcher vessels, inshore processors may benefit financially if the set-aside is under-harvested.

Impacts from excluding offshore catcher vessels from the CVOA. Under BSAI Amendment 51, catcher vessels that deliver to the offshore component would be prohibited from fishing inside the CVOA during B season, from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing. Excluding offshore catcher vessels from the CVOA would impact catcher vessels delivering to motherships more than catcher vessels delivering to factory trawlers. Codends, once retrieved, cannot be towed for significant distances without damaging the pollock, which means that offshore catcher vessels must operate within relatively close proximity to their processor. For this reason, a catcher vessel delivering to a factory trawler that is fishing outside the CVOA must also fish outside the CVOA unless both vessels are fishing very close to the boundary of the CVOA. Currently, catcher vessels delivering to motherships do not face this restriction because motherships are allowed to operate within the CVOA, and the mothership fleet has a history of operating within the CVOA during the B season. During public testimony, representatives for mothership operations expressed concerns about vessel safety if they are required to fish outside the CVOA during the B season. The extent to which these concerns are justified is difficult to evaluate. The US Coast Guard indicated that no statistics exist to suggest that fishing outside the CVOA is more dangerous than fishing inside the CVOA. However, excluding offshore catcher vessels from the CVOA would force these vessels to operate further offshore during the B season, which may have some unquantifiable impact on vessel safety. It could also impose additional costs on these vessels to the extent that they are forced to transit farther from port to begin fishing.

Effects of GOA Amendment 51 on small entities. The IRFA concludes that GOA Amendment 51 would affect the entire GOA commercial fishing fleet. In 1996, the most recent year for which vessel participation information is available, 1,508 vessels participated in the groundfish fisheries of the GOA; 1,254 longline vessels, 148 pot vessels, and 202 trawl vessels. Most of these vessels are considered small entities under the RFA. The commercial pollock catch in the GOA totaled 51,000 mt in 1996 with an exvessel value of $10.3 million. The Pacific cod catch in the GOA totaled 68,000 mt in 1996 with an exvessel value of $25.2 million. Most of the businesses involved in the support service industry for the groundfish

fisheries of the GOA (e.g., equipment, supplies, fuel, groceries, entertainment, transportation) are also considered to be small entities.

GOA Amendment 51, which would allocate 100 percent of the pollock TAC and 90 percent of the Pacific cod TAC to the vessels fishing for processing by the inshore component, would positively impact nearly all small entities participating in the pollock and Pacific cod fisheries of the GOA because nearly all of these small entities are part of the inshore component. The absence of Amendment 51 would open up the GOA pollock and Pacific cod fisheries to exploitation by large catcher processors, which are not small entities, and the current small entity participants in the GOA pollock and Pacific cod fisheries would be largely displaced as a result.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an environmental assessment (EA) for these FMP amendments that discusses the impact on the environment as a result of this rule. The fisheries for pollock and Pacific cod and the affected human environment are described in the FMPs, the environmental impact statement prepared for Amendments 18/23, the EA prepared for Amendments 38/40, and in the EA prepared for this action. A copy of the EA is available from the Council (see **ADDRESSES**).

A formal section 7 consultation under the Endangered Species Act was initiated for Amendments 51/51. A biological opinion is under preparation that will determine whether the fishing activities conducted under Amendments 51/51 and its implementing regulations are likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 23, 1998.

Gary C. Matlock,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of ''inshore component'' and ''offshore component'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 2001) means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the GOA or BSAI:

(1) Shoreside processing operations.

(2) Vessels less than 125 ft (38.1 m) LOA, that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.

(3) Vessels that process pollock or Pacific cod harvested in a directed fishery for those species at a single geographic location in Alaska State waters during a fishing year.

* * * * *

Offshore component (applicable through December 31, 2001) means all vessels not included in the definition of ''inshore component'' that process groundfish harvested in the BSAI or GOA.

* * * * *

3. In § 679.7, paragraph (a)(7) heading is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(7) *Inshore/offshore* (Applicable through December 31, 2001).* * *

* * * * *

4. In § 679.20, the applicable dates in the headings of paragraphs (a)(6), (b)(1)(iv), (b)(2)(i), (b)(2)(ii), and (c)(4) are revised to read: ''Applicable through December 31, 2001.''; paragraph (a)(6)(i) is revised; and paragraph (a)(6)(vi) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(6) * * *

(i) *BSAI pollock.* The apportionment of pollock in each BSAI subarea or district and season will be allocated 39 percent to vessels catching pollock for processing by the inshore component and 61 percent to vessels catching pollock for processing by the offshore component.

* * * * *

(vi) *Bering Sea subarea pollock set-aside fishery for catcher vessels less than 125 ft (38.1 m) LOA*—(A) *Calculation of amount.* An amount equal to 2.5 percent of the BSAI pollock TAC, after subtraction of reserves, will be set aside from the inshore component B season allowance. This set-aside will become available to catcher vessels less than 125 ft (38.1 m) LOA catching pollock for processing by the inshore component on or about August 25 of each year as set out at § 679.23(e)(2)(ii)(E).

(B) *Underages and overages.* Any harvest underage or overage of the small vessel set-aside established under paragraph (a)(6)(vi)(A) will be added to or subtracted from inshore component B season allowance.

* * * * *

5. In § 679.22, paragraph (a)(5) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area (CVOA) (applicable through December 31, 2001).* The CVOA is defined as the area of the BSAI east of 167° 30′ W. long., west of 163° W. long., and south of 56° N. lat. (see Figure 2 of this part).

(i) *Effective time period.* The CVOA is established annually during the B season, defined at § 679.23(e)(2)(i)(B), from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing.

(ii) *Offshore component restrictions.* Vessels in the offshore component or vessels catching pollock for processing by the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are operating under a CDP approved by NMFS.

(iii) *Fisheries other than pollock.* Vessels that harvest or process groundfish in directed fisheries for species other than pollock may operate within the CVOA consistent with the other provisions of this part.

6. In § 679.23, paragraph (e)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) *Directed fishing for pollock.* (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section, directed fishing for pollock is authorized only during the following two seasons:

(A) *A season.* From 0001 hours A.l.t. January 1 through 1200 hours A.l.t. April 15.

(B) *B season.* From 1200 hours A.l.t. September 1 through 1200 hours A.l.t. November 1.

(ii) *Offshore component restrictions (applicable through December 31,*

2001)—(A) *Offshore A season.* Subject to the other provisions of this part, directed fishing by the offshore component or by vessels delivering to the offshore component is authorized from 1200 hours A.l.t. January 26 through 1200 hours A.l.t. April 15.

(B) *Offshore A season ''fair start'' requirement.* Directed fishing for pollock by the offshore component, or by vessels catching pollock for processing by the offshore component is prohibited through 1200 hours, A.l.t., February 5, for any vessel that is used to fish in a non-CDQ fishery for groundfish in the BSAI or GOA, or for king or Tanner crab in the BSAI prior to 1200 hours, A.l.t., January 26 of the same year.

(iii) *Set-aside for catcher vessels less than 125 ft (38.1 m) LOA (applicable through December 31, 2001).* Subject to other provisions of this part, directed fishing for pollock by catcher vessels less than 125 ft (38.1 m) LOA catching pollock for processing by the inshore component will be authorized beginning on or about August 25 of each year by notification in the **Federal Register**. NMFS will base the opening date on the amount of the set-aside, the projected harvest rate, and the number of vessels expected to participate in the set-aside fishery.

(iv) *B season ''fair start'' requirement.* Except as provided for in paragraph (e)(2)(iii) of this section, directed fishing for pollock is prohibited from 1200 hours A.l.t., September 1 through 1200 hours, A.l.t., September 8, for any vessel that is used to fish for groundfish with trawl gear in a non-CDQ fishery in the BSAI or GOA between 1200 hours A.l.t., August 25, and 1200 hours A.l.t., September 1.

* * * * *

[FR Doc. 98–28893 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 63, No. 209
Thursday, October 29, 1998

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Change in Procurement Process for Peanut Butter

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) intends to purchase commercial quality peanut butter for use in its domestic feeding programs. Beginning November 16, 1998, CCC will no longer purchase peanut butter using USDA specifications. CCC will develop a qualified products list using samples received from contractors. Bids will only be accepted from contractors listed on the qualified products list.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Timothy Reaman, Chief, Miscellaneous Product Branch, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri, 64114, telephone (816) 823–2832, fax (816) 823–4195; or Dean Jensen, Chief, Contract Management Branch, 1400 Independence Avenue, SW, STOP 0551, Washington, DC 20250, telephone (202) 720–2115, fax (202) 690–1809.

SUPPLEMENTARY INFORMATION: On November 16, 1998, CCC will begin purchasing standard retail commercial quality peanut butter with a history of consumer acceptance. Labels may be commercial brand name or generic labels; however, labels must comply with the Nutrition Labeling and Education Act requirements. Under this process, contractors will submit a representative sample of their product, in original packaging, to an independent third party laboratory for sensory and quality analysis. Peanut butter which is determined to be equivalent to or exceeds the quality which would be acceptable in the trade for a generic retail store brand, will be placed on an qualified products list. Bids will only be accepted from this list. Any style of container may be used provided the seller complies with best commercial practices for handling, shipping, and storage of the containers. Contractors must submit a Certificate of Compliance (COC) as described in the Federal Acquisition Regulation (FAR) 48 CFR part 46.315, and FAR clause 52.246–15, for each lot of product produced under contract. Commercial laboratories may be used for all analysis provided they are capable of performing all required tests, and use methods approved by the Association of Analytical Chemists (AOAC), and the American Oil Chemist Society (AOCS).

Suppliers will be audited under the guidelines of the Total Quality Systems Audit Program (TQSA). TQSA will serve as a method of verification that a supplier has met and continues to meet contract requirements and to verify accuracy of the contractor's COC. TQSA will include a review of documentation and records, onsite quality system audits, and product reviews both at the point of production and at destination.

Failure of suppliers to deliver a product of an equivalent quality from that which was evaluated by the sensory panel may constitute a cause for termination for default or provide cause for suspension or debarment from participation in Government procurement and other programs.

Signed at Washington, DC, on October 20, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–28996 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—7 CFR Part 235 State Administrative Expense Fund Regulations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Nutrition Service's (FNS) intention to request Office of Management and Budget (OMB) review of the information collection related to State administrative expense funds, including the adjustments to be made as a result of the final rule, Food Distribution Program-Reduction of the Paperwork Burden.

DATES: To be assured of consideration, comments must be received by December 28, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terry Hallberg at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 235, State Administrative Expense Funds Regulations.

OMB Number: 0584–0067.

Expiration Date: September 30, 1998.

Type of Request: Reinstatement with change of a previously approved collection for which approval has expired.

Abstract: Section 7 of the Child Nutrition Act of 1966 (Pub. L. 89–642) 42 U.S.C. 1776, authorizes the Department to provide Federal funds to State agencies (SAs) for administering the Child Nutrition Programs. 7 CFR part 235, State Administrative Expense

Funds (SAE), sets forth procedures and recordkeeping requirements for use by SAs in reporting and maintaining records of their needs and uses of SAE funds. The final rule, Food Distribution Program-Reduction of the Paperwork Burden (62 FR 53727, October 16, 1997), makes agreements between the U.S. Department of Agriculture (Department) and State agencies to operate food distribution programs ongoing, instead of annual, with amendments to be added at the request of the Department. The agreement, FCS–74, Federal-State Agreement, is contained in the information collections for part 235.

Estimate of Burden: The reporting burden for this collection of information is estimated at 6,950 burden hours. The recordkeeping burden is estimated at 13,961 burden hours, which is comprised of the maintenance of records to document usage of SAE funds. The increase in reporting burden hours is associated with an increase in the number of State agencies from 84 to 87. The substantial decrease in the recordkeeping burden hours is due to increased automation within State agencies and alternate State agencies.

Estimated Number of Respondents: 87 respondents.

Average Number of Responses per Respondent: 213 responses.

Estimated Total Annual Burden on Respondents: 20,912 burden hours.

Dated: October 20, 1998.

Samuel Chambers, Jr.,

Acting Administrator.

[FR Doc. 98–28985 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Luky Duk Placer Claim, Suction Dredging; Nez Perce National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of dredging on the El Luky Duk placer claim on the South Fork Clearwater River. The claimant has proposed using four different dredges (an eight-inch, a six-inch, a five-inch, and a three-inch), one at a time, to remove possible gold deposits from the gravel and at bedrock in the South Fork Clearwater River. The proposal is to operate for two years between the first of July to the first week in October. The El Luky Duk placer claim is located in portions of Sections 20, 21, 27 and 28, T29N, R7E, BPM. The suction dredging is proposed for a reach of the river in Section 27.

DATES: Written comments and suggestions should be received on or before November 30, 1998.

ADDRESSES: Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Michael R. McGee, Acting District Ranger, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525.

FOR FURTHER INFORMATION CONTACT: Jo Ellis, District Geologist, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525, phone (208) 842–2245.

SUPPLEMENTARY INFORMATION: The proposed action is proposed pursuant to the 1872 Mining Law, the Organic Administration Act of 1897 and Forest Service mining regulations, Title 36 Code of Federal Regulations (CFR), Part 228, Subpart A. The United States mining laws at 30 U.S.C. 21–54 confer a statutory right to enter upon the public land to search for and remove certain minerals. The Forest Service has the responsibility to make sure that the activities are conducted so as to minimize adverse environmental impacts to National Forest System lands, 36 CFR, Part 228, Subpart A.

The proposal involves processing approximately 325 cubic yards of river gravel over a 150 foot section of the South Fork Clearwater River. A cross section approximately eight feet wide and six feet deep would be processed. The process involves utilizing high pressure water pumps driven by gasoline-powered motors which create suction in a flexible intake pipe. A mixture of streambed sediment and water is vacuumed into the intake pipe and passed over a sluice box mounted on a floating barge. Dense particles (including gold) are trapped in the sluice box. The remainder of the entrained material is discharged into the stream as tailings or spoils. A hole is created in the gravel so bedrock is exposed. Cracks in the bedrock are then cleaned with the suction. Large boulders or rootwads are moved by cables attached to a winch.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the ''no action'' alternative, in which the Plan of Operations would not be approved. Additional alternatives will examine varying intensity and duration of the proposed activities, including restrictions on the size of equipment and length of seasonal operation, as well as respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

1. Identify potential issues;
2. Identify major issues to be analyzed in depth;
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS;
4. Identify alternatives to the proposed action;
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in January 1999. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in June 1999. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S.C. 519, 513, (1978). Also, environmental objections that could be raised at the

draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986), and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis., 1980); Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing to procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Michael R. McGee is the responsible official for this environmental impact statement.

Dated: October 20, 1998.

Michael R. McGee,

Acting District Ranger, Red River Ranger District, Nez Perce National Forest.

[FR Doc. 98–29027 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

	Facility No., name, and location of stockyard	Date of posting
AL–158	Ranburne Stockyard, Ranburne, Alabama	February 21, 1975.
IL–171	Heart of Illinois Arena, Peoria, Illinois	June 22, 1986.
KY–126	Blue Grass Stockyards, Inc., Lexington, Kentucky	February 26, 1931.
KY–129	Kentucky Livestock Exchange, Louisville, Kentucky	November 1, 1921
NC–160	Boone Stockyard, Inc., Boone, North Carolina	August 22, 1996.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

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

Dr. Michael J. Caughlin, Jr.,

Director, Office of Policy Litigation/Support, Packers and Stockyards Programs.

[FR Doc. 98–28950 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–EN P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b) by posting notices at the stockyards on the dates specified below that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

	Facility No., name, and location of stockyard	Date of posting
NM–123	Southwest Livestock Auction, Lo Lunas, New Mexico	August 12, 1998.
NC–173	Burgin Auction & Real Estate, Marion, North Carolina	September 16, 1998.

Done at Washington, DC this 22nd day of October 1998.

Dr. Michael J. Caughlin, Jr.,

Director, Office of Policy Litigation/Support, Packers and Stockyards Programs.

[FR Doc. 98–28949 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a new conservation practice standard in its National Handbook of Conservation Practices. This new standard is: Water Testing (NY 731).

DATES: Comments will be received on or before November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor,

Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: October 20, 1998.

Joseph R. DelVecchio,

Assistant State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 98–29038 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 5:30 p.m. on November 17, 1998, at the Logan County Court House, County Commissioners Meeting Room, 300 Stratton Street, Logan, West Virginia 25601. The Committee will hold a community forum with government, community, and religious leaders to discuss challenges facing minorities in Southern West Virginia. In addition to invited panelists, an open session will allow members of the public to present their views on ongoing civil rights issues in the region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gregory T. Hinton, 304–367–4244, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 20, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–28835 Filed 10–28–98; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/16/98–10/16/98

Firm name	Address	Date petition accepted	Product
Samax Precision, Inc	926 West Evelyn Avenue, Sunnyvale, CA 94080.	10/09/98	Medical Diagnostic Equipment for the Analysis of Blood.
Diversified Fabrics, Inc	303 Ruppe Street, Kings Mountain, NC 28086.	09/02/98	Fabric for the Window Covering Industry.
Reyes Industries, Inc	1554 Cantrell, San Antonio, TX 78221.	09/22/98	Canvas Bags, Cots, Chin Straps, Stadium Seats, and Soft Sided Ice Coolers.
Garrett Container Systems, Inc	123 North Industrial Park Avenue, Accident, MD 21520.	09/22/98	Transport/Storage Containers.
Western Bronze, Inc	54 Western Avenue, West Springfield, MA 01089.	09/23/98	Non-Ferrous Pump, Valve, Industrial Machine Parts.
V & P Enterprises, Inc. dba Circuit Images.	3155 Bluff Street, Boulder, CO 80301.	09/23/98	Printed Circuit Boards.
Selco Custom Time Corporation	8909 East 21st Street, Tulsa, OK 74129.	09/23/98	Wrist Watches and Clocks.
Electronic Transformer Corporation.	460 Totowa Avenue, Paterson, NJ 07522.	09/23/98	Transformers.
Lyons Diecasting Company, Inc	Highway 24 Holly Road, Buckner, MO 64016.	09/29/98	Aluminum and Zinc Diecast Switch Activators for Electric Home Cooking Appliances and Hand Tools.
Hargrove Manufacturing Corporation.	207 Wellston Park Road, Sand Springs, OK 74063.	09/29/98	Fireplace Logs of Ceramic.
Multiplex Technologies, Inc	9441 Baythrone Drive, Houston, TX 77041.	10/02/98	Printed Circuit Boards.
Star Styled Dancing Supplies, Inc.	920 West 23rd Street, Hialeah, FL 33166.	10/02/98	Tops and Bottoms of Knit and Synthetic Fiber for Dancing.
Moore-Merkowitz Tile Ltd	5552 East Valley Road, Alfred Station, NY 14803.	10/02/98	Glazed Ceramic Wall and Floor Tile.
MMC Systems, Inc. dba Marvel Manufacturing Co.	5922 San Pedro Avenue, San Antonio, TX 78212.	10/02/98	Washing Machines with Built In Dryers.
Executive Moldmakers, Inc	2125 South West Avenue, Waukesha, WI 53186.	10/05/98	Metal Molds for Injection Molding of Plastic.
Acme Electric Corporation	400 Quaker Road, East Aurora, NY 14052.	10/05/98	Power Supplies Incorporated with Automatic Data Processing Machines and Telecommunication Switches.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/16/98–10/16/98—Continued

Firm name	Address	Date petition accepted	Product
HSU's Ginseng Enterprises, Inc	T6819 County Highway West, Wausau, WI 54402.	10/05/98	Wild and Cultivated Ginseng Roots.
Inglot Electronics Corporation ...	4878 North Elston Avenue, Chicago, IL 60630.	10/05/98	Electrical Transformers and Inductors.
Precision Electronic Glass, Inc	1013 Hendee Road, Vineland, NJ 08360.	10/09/98	X-Ray Tubes Made From Glass Tubing.
Milcom Services, Inc	1963 10th Avenue North, Lake Worth, FL 33461.	10/09/98	Cable and Wire Harnesses.
Motec Industries, Inc	7240 Crider Avenue, Pico Rivera, CA 90660.	10/09/98	Cable Wire Harnesses.
Smith Tool	1405 North Waverly, Ponca City, OK 74602.	10/13/98	Rotary Rock Drill Bits for Mining.
Aero Metalcraft, Inc	600 South Mill Street, Nashville, AR 71852.	10/16/98	Shears.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 22, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–28977 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Review, Requests for Revocation in Part and Deferral of Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, request for revocation in part and deferral of administrative review.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part and to defer the initiation of an administrative review for two antidumping duty orders and one countervailing duty order.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on certain cold-rolled carbon steel flat products from South Korea and certain corrosion-resistant carbon steel flat products from South Korea. The requests for revocation in part with respect to certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from South Korea were inadvertently omitted from the previous initiation notice (63 FR 51893, September 29, 1998). In addition, the Department received a request to defer for one year the initiation of the September 1, 1997 through August 31, 1998 administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled from Germany with respect to one exporter and the August 1, 1997 through July 31, 1998 administrative review of the antidumping duty order and the January 1, 1997 through December 31, 1997 administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany in accordance with 19 CFR 351.213(c). The Department received no objections to these requests from any party cited in 19 CFR 351.213(c)(1)(ii).

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 1999. Also, in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of the September 1, 1997 through

August 31, 1998 administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany with respect to one exporter and the August 1, 1997 through July 31, 1998 administrative review of the antidumping duty order and the January 1, 1997 through December 31, 1997 administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany.

	Period to be reviewed
Antidumping Duty Proceedings	
Argentina: Silicon Metal, A–357–804	9/1/97–8/31/98
Electrometalurgical Andina S.A.I.C.	
Germany: Large Newspaper Printing Presses and Components, Thereof, Whether Assembled or Unassembled, A–428–821,	9/1/97–8/31/98
MAN Roland Druckmaschinen AG	
Japan: Large Newspaper Printing Presses and Components, Thereof, Whether Assembled or Unassembled, A–588–837	9/5/96–8/31/97
Mitsubishi Heavy Industries, Ltd	9/1/97–8/31/98
Japan: Oil Country Tubular Goods, A–588–835	8/1/97–7/31/98
Okura & Co. Ltd. (Japan)*	
* Inadvertently omitted from previous initiative notice	
Malaysia: Extruded Rubber Threat, A–557–805	9/1/97–8/31/98
Heveafil Sdn. Bhd.	
Filmax Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Filati Lastex Elastofibre Sdn. Bhd.	
Rubfil Sdn. Bhd.	
Taiwan: Chrome-Plated Lug Nuts, A–583–810	9/1/97–8/31/98
Anmax Industrial Co., Ltd.	
Buxton International	
Chu Fong Metallic Electric Co., Ltd.	
Everspring Plastic Corp.	
Gingen Metal Corp.	
Gourmet Equipment (Taiwan) Corp.	
Hwen Hsin Enterprises Co., Ltd.	
Kwan How Enterprises Co., Ltd.	
Kwan Ta Enterprises Co., Ltd.	
Kuang Hong Industries, Ltd.	
Multigrand Industries, Ltd.	
San Chien Electric Industrial Works, Ltd.	
San Shing Hardware Works Co., Ltd.	
Transcend International Co.	
Trade Union International Inc./Top Line	
Uniauto, Inc	
Wing Tang Electrical Manufacturing Company, Inc	
The People's Republic of China: Certain Compact Ductile Iron, Waterworks Fittings and Glands A–570–920*	9/1/97–8/31/98
Beijing Metals and Minerals Import & Export Corporation	
* If the above named company does not qualify for a separate rate, all other exporters of compact ductile iron waterworks fittings and glands from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
The People's Republic of China: Chrome-Plated Lug Nuts* A–570–808,	9/1/97–8/31/98
Jiang Su Huanghai Auto Parts Co., Ltd.	
* If the above named company does not qualify for a separate rate, all other exporters of chrome-plated lug nuts from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the PRC entity of which the named exporter is a part.	
The People's Republic of China: Freshwater Crawfish Tail Meat,* A–570–848	3/26/97–8/31/98
China Everbright Trading Company	
Binzhou Prefecture Foodstuffs Import & Export Corp.	
Huaiyin Foreign Trade Corp.	
Yancheng Foreign Trade Corp.	
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.	
Yancheng Baolong Aquatic Foods Co., Ltd.	
Huaiyin Ningtai Fisheries Co., Ltd.	
Nantong Delu Aquatic Food Co., Ltd.	
Ninbo Nanlian Frozen Foods Company, Ltd.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the PRC entity of which the named exporter is a part.	
United Kingdom: Cut-to-Length Carbon Steel Plate,* A–412–814	8/1/97–7/31/98
Murray International Metals, Inc.	
*Inadvertently omitted from previous initiation notice.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

	Period to be deferred
Deferral Initiative of Administrative Review	
Germany: Large Newspaper Printing Presses and Components, Thereof, Whether Assembled or Unassembled, A–428–821 Koenig & Bauer-Albert AG	9/1/97–8/31/98
Germany: Certain Cut-to-Length Carbon Steel Plate, A–428–816 Novosteel SA	8/1/97–7/31/98
Germany: Certain Cut-to-Length Carbon Steel Plate, C–428–817 Novosteel SA	1/1/97–12/31/97

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 26, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–29047 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–816]

Notice of Postponement of Time Limit for Countervailing Duty Investigation: Elastic Rubber Tape From India

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

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Sally Hastings, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2815 or 482–3464, respectively.

Postponement

On September 8, 1998, the Department of Commerce (''the Department'') initiated a countervailing duty investigation of elastic rubber tape from India. On October 16, 1998, in accordance with section 351.205(e) of the Department's regulations (62 FR 27295, May 19, 1997), the petitioners made a timely request that the Department postpone its preliminary determination. As we find no compelling reasons to deny the petitioners' request, we are postponing the preliminary determination in this investigation to no later than November 30, 1998, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: October 23, 1998.

Laurie Parkhill,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–29048 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112197A]

Comprehensive Research and Monitoring Plan for Atlantic Highly Migratory Species

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

ACTION: Notice of availability of final plan.

SUMMARY: NMFS announces the availability of a plan for research and monitoring to support the conservation and management of Atlantic highly migratory species (HMS) as required by the Atlantic Tunas Convention Act (ATCA). NMFS has prepared the ''Comprehensive Research and Monitoring Program for Atlantic Highly Migratory Species'' (Plan) based on extensive consultation with relevant Federal and state agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private. Members of the public were provided with an opportunity to submit comments on the draft plan, and these comments were considered in developing the final plan.

ADDRESSES: Requests for copies of the Plan should be sent to Dr. Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel Husted, telephone (301) 713–2347; FAX (301) 713–1917.

SUPPLEMENTARY INFORMATION: NMFS currently undertakes a broad range of actions to address research and monitoring priorities, including rulemaking, scientific activities within the agency, and external partnerships that extend research capabilities. The agency has developed its existing research and monitoring program for HMS through a process of consultative reviews and public meetings with relevant Federal and state agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private. NMFS will continue to follow this same public process, which has proven to be an effective means of consulting all interested parties.

The final plan is based on the existing research and monitoring program at NMFS as well as on suggestions for future initiatives based on domestic and international priorities. It has been prepared pursuant to section 971i(b) of ATCA, which directs the Secretary of Commerce to develop and implement a comprehensive research and monitoring program to support the conservation

and management of Atlantic bluefin tuna and other HMS. Section 971i(b) requires that the comprehensive research and monitoring program for HMS shall provide for, but not be limited to, the following:

1. Statistically designed cooperative tagging studies;
2. Genetic and biochemical stock analyses;
3. Population censuses carried out through aerial surveys of fishing grounds and known migration areas;
4. Adequate observer coverage and port sampling of commercial and recreational fishing activity;
5. Collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landings reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;
6. Studies of the life history parameters of bluefin tuna and other highly migratory species;
7. Integration of data from all sources and the preparation of data bases to support management decisions; and
8. Other research as necessary.

Comments and Responses

Research Priorities

Comment: The final plan should clearly outline research priorities, rather than provide a compendium of possibilities for future research activities. There should be a strong emphasis on submitting the results to peer reviewed journals.

Response: NMFS agrees. The final plan has been restructured to include a section on priorities. This approach should provide a better context for the description of HMS research activities that follows. NMFS will continue to submit the findings of research projects that are conducted or sponsored by the agency to a vigorous peer review process in the appropriate forum.

Funding for Research

Comment: The plan should include a section with a time line that establishes a schedule for accomplishing this research. The document should also outline how the agency anticipates funding the research plan.

Response: These are not required elements of the plan, pursuant to ATCA section 971i(b). NMFS is unable to predict future funding for these projects since the appropriation process is revisited annually by Congress and many HMS research initiatives are dependent upon international cooperation and funding. Therefore, funding levels and future dates of completion for the projects outlined in this plan have not been identified.

Request for Proposals

Comment: NMFS should initiate a Request for Proposals (RFP) as a means of publicizing and undertaking the research in this comprehensive plan. The RFP should indicate the amount of funding available for these projects.

Response: NMFS has been unable to issue an RFP due to insufficient discretionary funding. This year's funding is largely dedicated to previous commitments to multi-year projects and implementation of the Magnuson-Stevens Act.

Data Collection in Commercial and Recreational Fisheries

Comment: NMFS should strengthen its data collection methodology to ensure that comparable data are collected for commercial and recreational fisheries, as required by ATCA.

Response: NMFS is aware that ATCA requires the collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landings reports for charter operations and fishing tournaments, and programs to provide reliable reporting of catch by private anglers. Existing regulations, as well as the draft Fishery Management Plan for Atlantic Highly Migratory Species (HMS FMP) and the draft Amendment to the Fishery Management Plan for Atlantic Billfishes (Billfish FMP), contain specific proposed management measures to address this legal requirement. NMFS is committed to strengthening and improving the collection of data in all HMS fisheries as an integral part of a comprehensive program for research and monitoring.

Comment: The Plan should include a more thorough discussion of the Marine Recreational Fisheries Statistical Survey and the Large Pelagic Survey that explains the parameters of these surveys, including sample size and calibration.

Response: NMFS does not consider this level of detail to be an appropriate part of the Plan. The draft HMS FMP provides more details relative to these surveys of the recreational HMS fisheries.

Studies of Life Histories

Comment: The draft plan does not contain enough detail on how NMFS intends to collect information on Essential Fish Habitat, pursuant to requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Response: The draft HMS FMP and the draft Amendment to the Billfish FMP each contain a substantial discussion of information needs relative to Essential Fish Habitat for species covered by the Plan. Development of these draft documents has included extensive involvement from the Advisory Panels and the public. Therefore, while this information is indeed relevant to the life histories of HMS, a complete discussion of Essential Fish Habitat data needs is not repeated in the ATCA plan.

Socioeconomic Studies

Comment: NMFS should study the socioeconomic consequences of proposed management measures for HMS fisheries, including limited access.

Response: A number of socioeconomic research projects relative to HMS were conducted in 1997 and 1998 with funding from NMFS, as mentioned in the Plan. Numerous social and economic analyses have also been conducted in conjunction with the preparation of the draft HMS FMP and the draft Amendment to the Billfish FMP. NMFS agrees that socioeconomic studies are an essential part of a comprehensive research program for HMS.

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

Dated: October 22, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–29020 Filed 10–28–98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102198A]

Small Takes of Marine Mammals Incidental to Specified Activities

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Washington State Department of Corrections (WDOC) for authorization to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition of the Still Harbor Dock Facility on McNeil Island

in southern Puget Sound. Under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the WDOC to incidentally take by harassment a small number of harbor seals in the vicinity of Gertrude Island for a period of 1 year, provided certain mitigation measures are incorporated into the project.

DATES: Comments and information must be received no later than November 30, 1998.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and a 1994 environmental assessment, which includes a list of references used in this document, may be obtained by writing to this address or by telephoning one of the contacts listed in **FOR FURTHER INFORMATION CONTACT** section.

The Washington State Final Environmental Impact Statement (FEIS) and other documents are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, Rm 13600, 1315 East-West Highway, Silver Spring, MD 20910, and Northwest Region, NMFS, Bldg 1, 7600 Sand Point Way, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Brent Norberg, Northwest Regional Office, NMFS, (206) 526–6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) or will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Background of Request

On September 18, 1998, NMFS received an application from the WDOC requesting an authorization for the possible harassment of small numbers of harbor seals incidental to work involved in the removal and replacement of the Still Harbor Dock Facility (Dock Facility), a foul weather landing facility for the McNeil Island Corrections Center, McNeil Island, WA. (The Quitclaim Deed, which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population). Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major renovation in order to maintain a safe, functional facility.

On January 23, 1995, the WDOC was issued an Incidental Harassment Authorization (IHA) under section 101(a)(5)(D) of the MMPA for this project (see 60 FR 7046, February 6, 1995). However, removal of the Dock Facility was not completed; the IHA expired one year after authorization; and a renewal was not requested since that time.

The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 350 ft (107 m) long by 10 ft (3.0 m) wide, a new 50 ft (15.2 m) long by 5 ft (1.5 m) wide aluminum gangway, seven new 10 ft (3.0 m) wide and 50 ft (15.2 m) long and one new 14 ft (4.3 m) wide and 60 ft (18.3 m) long concrete floats; and 60 steel pipe and prestressed concrete piles. All new structures will be constructed within the footprint of the existing facility. The new dock will be significantly smaller than planned in 1994 (8,000 ft^2 v. 20,000 ft^2). Additional information on the dock facility and the Corrections Center in general can be obtained by referring to the FEIS published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (Chapter 43.21C, Revised Code of Washington). This document and the 1998 Addendum are available for viewing (see **ADDRESSES**).

In an effort to minimize noise from these activities, no explosives will be used for demolition. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile-driving activities are anticipated to be completed in one season's specified work window from December 1998 or January 1999, through March 15, or April 1, 1999. Above-water work is scheduled to continue through to the end of August 1999.

Alternatives to the Proposed Action

No alternative options for the foul weather dock and moorage have been identified by the WDOC for McNeil Island. Without the availability of the foul weather dock, prisoners, visitors, staff and supplies would be unable to land on the island until the weather cleared. In addition, management of McNeil Island by the State as a wildlife preserve and sanctuary prohibits any new road construction for an alternative dock location under the Wildlife Restriction terms in the Quitclaim Deed of the property.

Harbor seals

The harbor seal (*Phoca vitulina*) is the only marine mammal species anticipated to be taken by the demolition of the Dock Facility (although a few California sea lions may also be harassed). Gertrude Island is a low-tide haulout, and rookery used by harbor seals of various ages. The southern part of the island is located approximately 1,100 ft (305 m) from the

Dock Facility. The type of taking anticipated will be incidental harassment caused by the noise of demolition work, pile driving, and construction. It is anticipated that the seals may be disturbed upon initiation of activities on a daily basis until they become acclimated to the activity. The number of seals disturbed will vary with tidal elevation at the time of initiation of the activity.

Harbor seals are the most abundant pinniped in Washington State. Since passage of the MMPA in 1972, harbor seal populations in the inland waters of Washington have increased significantly. From 1983 to 1992, the Washington inland waters stock of harbor seals increased at an annual rate of 6.1 percent (NMFS, 1994; Huber *et al*., in prep.). Boveng (1988) and NMFS (1991) estimated the minimum harbor seal population for the state's inland waters to be 6,062. More recently, Barlow *et al*. (1997) estimate the inland population at 16,253, giving it a minimum population size estimate of 15,349. South Puget Sound pup counts are presently increasing at an annual rate of 15.3% from 365 total (25 pups) in 1984 to 706 total (78 pups) in 1992 (NMFS data). Harbor seals occupy all nearshore areas of Puget Sound, including McNeil and Gertrude Islands, throughout the year. Based on data from the Washington Department of Fish and Wildlife (WDFW) and NMFS on Gertrude Island, total seal counts between 1988 and 1993 indicate the peak use in September and the lowest use in February. The most current data on maximum numbers of harbor seals using the Gertrude Island haulout during the demolition work window vary from 215 to 634, depending on the month (NMFS data). Seasonal increases at Gertrude Island have been ascribed to the onset of pupping and molting seasons and to a movement of seals from other haulout sites as disturbances increase during the summer (Jones and Stokes, 1989). The pupping season for the Gertrude Island herd extends from late July to late September, and the molting season extends from early October to early December (Newby, 1971; Skidmore and Babson, 1981).

The impact to the harbor seals would be disturbance by noise which is anticipated to result in a negligible short-term impact to a small number of harbor seals. When harbor seals are frightened by noise or by the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981). These short term disturbances and site reoccupation were confirmed by observations conducted during the first phase of the project (WDOC, 1997). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months when the use of the dock facility serving as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats increases.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed here) under an MMPA IHA are expected to reduce any impacts to a negligible level.

Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC and proposed for inclusion in the IHA include:

1. A December 1–July 15 (or whenever newborn pups are first observed on Gertrude Island) work schedule for those activities that are predicted to disturb harbor seals in order to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);

2. A 1,000–ft (305 m) no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be marked by floats);

3. Construction activities and seal behavior will be monitored by marine biologists to ensure that impacts on seals will be minimal;

4. The demolition will not utilize any explosives;

5. The removal of material and debris will be in the largest sizes possible, and the removed materials will be transported off site for disposal; and

6. To mitigate noise levels and, thereby, impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency (EPA, 1974), and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

Monitoring

The Gertrude Island haulout has been the site of several research projects for a number of years. Current research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. A cooperative monitoring program by NMFS and WDFW is under discussion; alternatively, WDOC may contract with a private contractor to monitor activities. In addition, NMFS proposes to require WDOC to notify NMFS and the WDFW prior to work in order to coordinate the monitoring of potential disturbances to seals.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for the demolition of the collapsed portion of the Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has preliminarily determined that the demolition of the Dock Facility would result in the harassment taking of only a small number of harbor seals and possibly California sea lions, would have a negligible impact on the harbor seal and California sea lion stocks and would not have an adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request.

Dated: October 23, 1998.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–29021 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102198B]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold a meeting.

DATES: The Council meeting will be held on November 11, 1998, from 7:00 p.m. to 10:00 p.m.

ADDRESSES: The meeting will be held at the Conference Room of the Caravelle Hotel,located at 44A Queen Cross St., Christiansted, St. Croix, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926; fax: (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Council will hold its 96th regular public meeting to discuss the Sustainable Fisheries Act (SFA) Requirements and the Overfishing Definition, among other things. The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral and written statements regarding agenda issues, as presented here:

1. Call to Order
2. Adoption of Agenda
3. SFA Requirements

Public Hearings Summary

Final Action - Overfishing Definition and other SFA requirements

4. Other Business
5. Next Council Meeting

Although other issues not contained in this agenda may come before the Council 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 the agenda listed in this notice.

Special Accommodations:

This meeting is physically accessible to people with disabilities. For more information or requests for sign language interpretation or other auxiliary aids, please contact Mr. Miguel A. Rolon at the Council (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: October 21, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–28914 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

October 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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.

At the request of the Government of Sri Lanka, previous adjustments for swing and special shift for certain categories are being undone.

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 67837, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 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 Sri Lanka and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on October 29, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
336/636/836	555,855 dozen.
345/845	138,619 dozen.
350/650	128,097 dozen.
351/651	433,652 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29040 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

October 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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 limits for certain categories are being adjusted, variously, for carryover, carryforward, swing and special shift.

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 65246, published on December 11, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 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 5, 1997, as amended on May 1, 1998, 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 Thailand and exported during the period January 1, 1998 through December 31, 1998.

Effective on October 29, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	18,340,776 square meters.
313–O [2]	15,863,433 square meters.
315–O [3]	37,387,234 square meters.
363	23,271,968 numbers.
Sublevels in Group II	
331/631	1,842,210 dozen pairs.
334/634	735,365 dozen.
335/635/835	444,224 dozen.
340	322,227 dozen.
345	340,129 dozen.
438	19,817 dozen.
645/646	351,694 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29039 Filed 10–28–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments to the Cash Settlement Provisions of the CME Russian Ruble Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to the terms and conditions of commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted proposed amendments related to the cash settlement provisions of its Russian ruble futures contract. Under the proposal, the CME would no longer base the cash settlement price of the Russian Ruble futures contract on the reciprocal of the daily rubles per dollar spot exchange rate as determined by the Moscow Interbank Currency Exchange (MICEX). Rather, the CME would base the cash settlement price on two surveys performed by the CME clearing house at random times on the last day of trading. The survey procedure would be similar to the procedure used for the daily survey that, under current rules, is used as a backup procedure for cash settlement of the Russian ruble futures contract.

The Commission has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before November 13, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CME Russian Ruble futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov

SUPPLEMENTARY INFORMATION: Under current rules for the CME ruble futures contract, the cash settlement price is the reciprocal of the spot rate of Russian rubles per US dollar determined by the Moscow Interbank Currency Exchange on the last day of trading. In the event that MICEX does not determine and/or disseminate that spot exchange rate on the last trading day, CME rules provide for a ''backup'' procedure to establish an alternative cash settlement price. That price is based on the results of a daily survey by the CME of Russian ruble-US dollar interbank market participants.

Under the backup procedure, the CME surveys at least twelve financial institutions that are active participants in the spot and/or non-deliverable forward markets. At 11:00 a.m. Moscow time, each participant is asked for its perception of the prevailing bid and the prevailing offer for a typically sized Russian ruble per US dollar spot transaction in the Moscow marketplace. If the CME receives more than eight responses, eight institutions are randomly selected for use in the rate calculation. The midpoint of each of the eight bid/offer pairs is determined, and the highest two and the lowest two midpoints are eliminated. The remaining four midpoints are averaged, and the reciprocal of that average is the daily rate, which could be used as the final settlement price, as noted above. If the CME is unable to obtain eight responses, but is able to obtain at least five responses, then the CME determines the midpoint of each bid/offer pair, eliminates the highest and the lowest midpoint, and averages the remaining midpoints. The reciprocal of that average is the final settlement price. If fewer than five responses are received, then the CME would invoke its emergency provisions to settle the expiring contract.

Under the proposal, the CME would modify the cash settlement provisions by removing reference to the MICEX spot exchange rate and by establishing a new survey procedure for deriving a ruble/dollar exchange rate for cash settlement. Specifically, the CME would perform two surveys of financial institutions at randomly selected times

during MICEX's afternoon System for Electronic Trading (SELT) session for transactions between commercial banks (currently conducted between 12:00 noon and 4:30 p.m. Moscow time) on each Moscow business day.[1] The rubles per dollar exchange rate would be calculated for each of the two daily surveys, generally using the same methodology described above for the single survey in the current backup procedure (including the number of survey participants and the elimination of high and low midpoints). The final settlement price would be the reciprocal of the average of the two rubles-per-dollar exchange rates calculated from the two surveys on the last trading day.

During each survey, the CME would ask participants for two separate rubles per dollar exchange rates as well as an overnight interbank ruble interest rate. Those two rubles per dollar exchange rates would be a ''today rate'' (the exchange rate for same-day settlement) and a ''tomorrow rate'' (the exchange rate for settlement on the next Moscow business day).[2] In its calculation of the final settlement price, the CME would use the today rate from each participant that provides a today rate. If any participant provides a tomorrow rate and overnight interest rate, but not a today rate, the CME would calculate an ''implied today rate'' for such participants. The implied today rate is calculated using the interest rate parity relation based on the tomorrow rate, the overnight ruble interest rate, and the federal funds overnight U.S. dollar interest rate.[3] Thus, under the proposal, the result of any single survey (and, thus, the cash settlement price) could consist of a mixture of actual and implied today rates.

In the event that the CME were unable to complete both daily surveys on the last trading day, the CME would calculate the final settlement price based on two surveys, performed under the same procedures, conducted on the Moscow business day following the last trading day. If the CME were also unable to complete two surveys on the second day, then the final settlement price would be based on the survey results from the most recent business day prior to the last trading day on which two surveys were successfully completed.

The CME proposes to implement the proposed amendments to the cash settlement provisions immediately upon Commission approval. Specifically, the amendments would apply to all currently listed contract months with open interest. The last such contract is the June 1999 contract. The CME delisted existing contract months with no open interest on October 7, 1998, and has suspended the listing of additional contract months. The Commission would review pursuant to Commission Regulation 1.41 any proposal by the CME to list additional months in the Russian ruble futures contract.

The Commission requests comment on the proposed changes and the proposal to apply those amendments to existing positions and the currently listed contact months. The Commission specifically requests comment on whether the survey procedure will result in a cash settlement price that is reflective of the underlying cash market and otherwise meets the standards of the Commission's Guideline No. 1.[4] In that regard, the Commission notes that the CME survey procedure is designed to obtain an exchange rate for same-day settlement during the afternoon MICEX session and that trading for same-day settlement is not currently permitted during that MICEX session. The Commission also requests comment on whether the CME procedure will result in a cash settlement price that is not readily susceptible to manipulation or distortion in light of the degree of liquidity of the Russian ruble market. Specifically, will the procedures used by the CME, including setting the cash settlement price based on two surveys conducted at random times, tend to prevent market participants from influencing the cash settlement price? Finally, in the current environment and given the proposed cash settlement provisions, can the Russian ruble contract be used for hedging or price discovery?

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatments as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 23, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–28983 Filed 10–28–98; 8:45 am]

BILLING CODE 6351–01–M

[1] According to Bloomberg Business News, on October 6, 1998, MICEX implemented two daily trading sessions—a morning session for importers and exporters and an afternoon session for transactions between commercial banks.

[2] After the afternoon MICEX session, trading is currently allowed only for settlement on the next Moscow business day.

[3] In this case, the tomorrow rate and overnight ruble interest rate used would be average rates calculated from the daily survey results. The federal funds rate would be obtained from Telerate.

[4] The Commission's Guideline No. 1 (17 CFR Part 5, Appendix A § (a)(2)(iii)) requires, for cash settled contracts, that the cash price series must be reflective of the underlying cash market and be reliable, acceptable, publicly available, and timely and not readily susceptible to manipulation.

DEPARTMENT OF DEFENSE

Department of the Army

BRAC 95 Final Environmental Assessment Disposal and Reuse of the Irwin Annex Site of the Charles E. Kelly Support Facility, Oakdale, PA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Pub. L. 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of two parcels at the Charles E. Kelly Support Facility, Oakdale, Pennsylvania.

The Final Environmental Assessment (EA) evaluates the environmental impacts of the disposal and subsequent reuse of one of the two parcels (the approximately 19 acre Irwin Annex property) located in Westmoreland County. Alternatives examined in the EA include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain

it in caretaker status for an indefinite period.

DATES: Submit comments on or before November 30, 1998.

ADDRESSES: A copy of the Final EA may be obtainable by writing to Dr. Neil Robison, U.S. Army Corps of Engineers, Mobile District (ATTN: CESAM–PD–EI), 109 St. Joseph Street, Mobile, Alabama 36602.

FOR FURTHER INFORMATION CONTACT:

Dr. Neil Robison via facsimile at (334) 690–2605.

SUPPLEMENTARY INFORMATION: While disposal of the Irwin Annex property is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of the Irwin Annex property is encumbered disposal, with encumbrances pertaining to utility easements, the possible presence of lead-based paint and asbestos-containing material, and the requirement for a right of reentry for potential environmental clean-up.

The Final EA will be made available for public comment during a 30-day waiting period after publication. A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the disposal and reuse of Irwin Annex property was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA is available for review at the Charles E. Kelly Support Facility, Oakdale, PA; The Redevelopment Authority of the County of Westmoreland, 601 Courthouse Square, Greensburg, PA 15601; the North Huntingdon Township Municipal Building, 11279 Center Highway, North Huntingdon, PA 15642; or the Manor Public Library, 47 Race Street, Manor, PA 15665.

Dated: October 23, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–28973 Filed 10–28–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–244–000]

Atlantic City Electric Company; Notice of Filing

October 22, 1998.

Take notice that on October 19, 1998, Atlantic City Electric Company (Atlantic Electric), tendered for filing a service agreement under which Atlantic Electric will sell capacity and energy to Merchant Energy Group of the Americas, Inc. (Merchant), under Atlantic Electric's market-based rate sales tariff.

Atlantic Electric requests that the agreement be accepted to become effective on September 23, 1998.

Atlantic Electric states that a copy of the filing has been served on Merchant.

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 and protests should be filed on or before November 10, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28987 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–429–001 and TM99–1–22–001 (Not Consolidated)]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 23, 1998.

Take notice that on October 20, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 1, 1998:

Sub. Fortieth Revised Sheet Nos. 32 and 33
Sub. Forty-First Revised Sheet Nos. 32 and 33

CNG states that the purpose of this filing is to remove $41,984.23 from the stranded costs reflected in CNG's September 30, 1998 filing in Docket No. RP98–429–000. This amount, which relates to certain capacity held on Texas Eastern Transmission Corporation, was incorrectly included in CNG's stranded cost calculation for the month of June, 1998. CNG further states that the proposed Section 18.2.B unit rates on Fortieth Revised Sheet Nos. 32 and 33 were also reflected in CNG's October 1, 1998 Transportation Cost Rate Adjustment Filing, which is pending in Docket No. TM99–1–22–000. CNG submits Substitute Forty-First Revised Sheet Nos. 32 and 33, in order to incorporate the corrected Section 18.2.B charge on those tariff sheets.

CNG states that copies of its filing are being mailed to all parties to the captioned proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28940 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–95–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 23, 1998.

Take notice that on October 20, 1998, CNG Transmission Corporation, (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 23, 1998:

Sheet Nos. 142A, 153A, 162A and 173A

Original Sheet No. 309A

CNG states that the purpose of this filing is to address pagination and supercession errors within Volume No. 1 of its tariff. At Sheet Nos. 142A, 153A, 162A and 173A, CNG seeks to establish reservation pages for sheets that were not effectively superseded by CNG's February 13, 1998 compliance filing in Docket No. CP96–492. Original Sheet No. 309A would recapture Sections 11B.4.B, 11B.4.C, and 11.B.4.D from the General Terms and Conditions. CNG states that it inadvertently omitted these subsections of its tariff during the repagination of this area as filed in Docket No. RP97–406–005.

CNG states that copies of its letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28943 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–14–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 23, 1998.

Take notice that on October 13, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP99–14–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate additional points of delivery for firm transportation service to existing customers, under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia states that the customers involved are Mountaineer Gas Company (MGC) and Columbia Gas of Ohio, Inc. (COH). The location of the new point of delivery for MGC is in Upshur County, West Virginia and COH's two new points of delivery are in Medina County, Ohio. The estimated quantities of natural gas to be delivered for each of the three new points of delivery is 1.5 Dth/day and 150 Dth/annually. The end use of gas for all three is residential and the estimated costs to establish the three new points of delivery is approximately $150 each and will be treated as O&M Expenses.

Columbia proposes to construct and operate a new point of delivery to MGC in Upshur County, West Virginia which will involve construction of interconnecting facilities located on Columbia's existing right-of-way. MGC will install a meter within Columbia's existing right-of-way to provide this service. The new point of delivery will allow MGC to serve Steve Carpenter, a residential customer.

Columbia proposes to construct and operate the new points of delivery to COH in Medina County, Ohio which will involve construction of interconnecting facilities located on Columbia's existing right-of-way. COH will install meters within Columbia's existing right-of-way to provide these services. The new points of delivery will allow COH to serve Tim A. Hawkins and Paul Stafinski, both are residential customers.

Columbia states that the new points of delivery will have no effect on peak day and annual deliveries, that its existing tariff does not prohibit the addition of new delivery points and that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28933 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–16–000]

Dauphin Island Gathering Partners; Notice of Application

October 23, 1998.

Take notice that on October 13, 1998, Dauphin Island Gathering Partners (DIGP), 370 17th Street, Suite 900, Denver, Colorado, 80202, filed in Docket No. CP99–16–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to lease additional capacity created by Texas Eastern Transmission Corporation (Texas Eastern) as a result of the construction of loop line on Texas Eastern' Main Pass System located offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

DIGP requests authorization to lease 100,000 dt equivalent of capacity per day from Texas Eastern, which would be the incremental capacity created by Texas Eastern's proposed construction. It is asserted that DIGP would use the capacity to transport gas for its shippers from Texas Eastern's Main Pass Block 164 to the Venice Gas Processing Plant in Plaquemines Parish, Louisiana. Texas Eastern has filed an application requesting certificate authorization for the construction in Docket No. CP99–18–000.

It is stated that DIGP needs the capacity to transport natural gas reserves from the offshore Main Pass and Viosca Knoll Areas to satisfy increased demand by DIGP's customers. It is asserted that DIGP would levy an incremental charge of between $0.00 and $0.10 per dt equivalent on those shippers using the additional capacity. It is explained that this would allow DIGP to recover its monthly lease payment to Texas Eastern from those shippers benefiting from the additional

capacity and that no other customers' rates would be affected. It is stated that the primary term of the capacity lease would be 15 years, commencing January 1, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 of 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for DIGP to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28934 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–609–001]

Northern Natural Gas Company; Notice of Petition To Amend

October 23, 1998.

Take notice that on October 13, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP97–609–001 a petition to amend the order issued November 3, 1997, in Docket No. CP97–609–000, *et al.*, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Western Gas Resources, Inc. (WGR) unit 6 at the Mitchell compressor station in Pecos County, Texas, rather than by removal, all as more fully set forth in the petition on file with the Commission and open to public inspection.

It is stated that by order issued November 3, 1997, Northern was authorized to abandon by sale to WGR certain compression facilities, with apurtenances, located in Pecos County, Texas, (Mitchell facilities) and the services rendered thereby. It is also stated that the November 3, 1997, order authorized Northern to abandon by removal units 5 and 6 at the Mitchell compressor station. It is further stated that concurrent with the approval of Northern's abandonment, the Commission declared in Docket No. CP96–641–000 that once acquired by WGR, the Mitchell facilities would perform a non-jurisdictional gathering function. Northern states that the sale closed effective December 31, 1997, and the facilities have been utilized in WGR's non-jurisdictional gathering operations since that date.

Northern states that due to enhanced recovery processes, gas supplies upstream of the Mitchell facilities have increased such that unit 6, which was previously thought to be unneeded, is now required for containing efficient operations of the gathering facilities connected to the subject facilities. Therefore Northern requests amendment of the November 3, 1997, order to approve the abandonment of unit 6 by sale to WGR, rather than by removal.

Any person desiring to be heard or to make any protests with reference to said petition to amend should on or before November 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (19 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–28932 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–19–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

October 23, 1998.

Take notice that on October 21, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First revised volume No. 1, the following tariff sheets to be effective November 2, 1998:

Original Sheet No. 239C
Fourth Revised Sheet No. 265

Panhandle states that the purpose of this filing is to supplement Panhandle's filing of October 1, 1998 in the subject docket to comply with Order No. 587–H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date issued on July 15, 1998 in Docket No. RM96–1–008. The tariff sheets listed above revise Sections 8.2(b) and 12.11(h) of the General Terms and Conditions to clarify that bumped interruptible shippers will be notified of such bump through the LINK System, the Web Site and by telephone and facsimile communication, and that the daily scheduling charge will not apply for the day of the bump.

Panhandle states copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28941 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–18–000]

Texas Eastern Transmission Corporation; Notice of Application

October 23, 1998.

Take notice that on October 13, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP99–18–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate additional pipeline facilities to expand the capacity of its Main Pass System, offshore Louisiana, and to lease the additional capacity to Dauphin Island Gathering Partners (DIGP), all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to construct, install, own, operate and maintain approximately 9.65 miles of 24-inch diameter pipeline and appurtenances, looping Texas Eastern's existing 16-inch line, which is part of its Main Pass System, between Block 95 and Block 92 of this system. Texas Eastern proposes to construct and operate a new subsea connection at Main Pass Block 92.

It is stated that the proposed expansion facilities would add 100,000 dt equivalent of capacity per day to Texas Eastern's existing capacity which is fully subscribed. It is explained that the additional capacity would be leased to DIGP following negotiations which were the result of an open season held in February 1998. DIGP has filed an application in Docket No. CP99–16–000 for authorization to lease the additional capacity from Texas Eastern. It is stated that the primary term of the capacity lease would be 15 years, commencing January 1, 2000.

It is estimated that the total cost of the proposed facilities would be approximately $15,000,000, to be financed with short-term loans, borrowing under revolving credit arrangements or funds on hand. It is requested that a certificate be issued allowing construction to take place during the 1999 summer construction season.

Texas Eastern states that the expansion facilities would benefit its system by providing access to newly available offshore gas supplies to Texas Eastern's customers at the Venice Gas Processing Plant in Plaquemines Parish, Louisiana. Texas Gas further states that the additional capacity would enhance flexibility on its system, without any additional cost to its customers, since DIGP's shippers would pay an incremental rate which would cover DIGP's monthly lease payments to Texas Eastern.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28935 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–20–001]

Trunkline Gas Company; Notice of Compliance Filing

October 23, 1998.

Take notice that on October 21, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Gariff, First Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Sub Second Revised Sheet No. 167A
Sub Original Sheet No. 167C
Second Revised Sheet No. 177

Trunkline states that the purpose of this filing is to supplement Trunkline's filing of October 1, 1998 in the subject docket to comply with Order No. 587–H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date issued on July 15, 1998 in Docket No. RM96–1–008. The tariff sheets included herewith revise Sections 3.1(B), 3.1(C) and 5.1(A) of the General Terms and Conditions to clarify that bumped interruptible shippers will be notified of such bump through the LINK System, the Web Site and by telephone and facsimile communication, and that the daily

scheduling charge will not apply for the day of the bump.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28942 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–20–000]

Williston Basin Interstate Pipeline Company; Notice of Application

October 23, 1998.

Take notice that on October 15, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–20–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon four farm taps in Washakie County, Wyoming, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to abandon the following farm taps:

- Busch farm tap at Station No. 283+34 located on the Slick Creek transmission line in SW¼ Section 9, T47N, R92W, Washakie County, Wyoming;
- Wagon Wheel farm tap at Station No. 401+65 located on the Slick Creek transmission line in NE¼ Section 28, T47N, R92W, Washakie County, Wyoming;
- McKamey farm tap at Station No. 4802+82 located on the Madden-Worland transmission line in NE¼ Section 27, T47N, R92W, Washakie County, Wyoming; and,
- Hiland farm tap at Station No. 4818+47 located on the Madden-Worland transmission line in SE¼ Section 22, T47N, R92W, Washakie County, Wyoming.

Williston Basin states that Wyoming Gas Company, a local distribution company, now serves the customers previously served by these farm taps through its distribution system and did not express opposition to the proposed abandonments.

Williston Basin states that project activity at each site will entail the excavation of the site within the existing, previously disturbed pipeline right-of-way, and will include capping of the tap riser at the mainline connection. Williston Basin further states the riser, surface piping and pipe fence, if present, will be removed and the excavation backfilled to natural contours and reseeded.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28936 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–5–000, et al.]

Baltimore Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 22, 1998.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas and Electric Company

[Docket No. EC99–5–000]

Take notice that on October 19, 1998, Baltimore Gas and Electric Company (Applicant) filed, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1994), and Part 33 of the Commission's Regulations, 18 CFR Part 33, an Application for an order authorizing and approving the implementation of a holding company structure.

Pursuant to a share exchange, owners of BGE's common stock will exchange, one for one, their shares of stock for shares of the common stock of a new corporation (HoldCo). The subsidiaries of BGE will become subsidiaries of HoldCo.

A copy of the Application has been served on the state utility regulatory commission of Maryland and Pennsylvania.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. M–S–R Public Power Agency; Modesto Irrigation District; City of Santa Clara, California; City of Redding, California

[Docket No. EL99–4–000]

Take notice that on October 16, 1998, the M–S–R Public Power Agency, the Modesto Irrigation District, the City of Santa Clara, California and the City of Redding, California, tendered for filing, in a joint pleading, independent requests for waiver of the separation of function requirements of Commission Order No. 889.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Corporation

[Docket Nos. ER97–2099–002 and ER97–2212–002]

Take notice that on October 19, 1998, Duke Energy Corporation (Duke), tendered for filing a compliance report in the above-referenced dockets in response to the Federal Energy Regulatory Commission's September 17, 1998, Order in Docket No. ER97–2099–002. The report relates to refunds in connection with transmission services for the Seneca Light and Water Board, Seneca, South Carolina and the Commissioners of Public Works of the City of Greenwood, South Carolina.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER97–4555–000]

Take notice that on October 19, 1998, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303, tendered for filing a notice of withdrawal of the changes to its Open Access Transmission Tariff previously filed in the above-referenced docket.

Copies of the notice of withdrawal were served on all parties to this proceeding.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER98–1846–001]

Take notice that on October 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing the executed Amendment No. 1, to the Meter Service Agreement for Scheduling Coordinators between Electric Clearinghouse, Inc., and the ISO for acceptance by the Commission. The ISO states that this filing revises the Meter Service Agreement for Scheduling Coordinators, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced dockets.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Rochester Gas and Electric Corporation

[Docket No. ER98–3921–001 and ER98–3922–001]

Take notice that on October 19, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) the revised form of service agreements and network operating agreements for the provision of network service to the Villages of Spencerport and Angelica, New York, in compliance with the Commission's September 18, 1998, order in the above-referenced proceeding.

A copy of this filing letter has been served on all parties on the Commission's official service list.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER98–4159–001]

Take notice that on October 19, 1998, Duquesne Light Company (Duquesne), tendered for filing its Code of Conduct in compliance with the Commission's Order of October 2, 1998 in Docket No. ER98–4159–000.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Constellation Energy Source, Inc.

[Docket No. ER99–198–000]

Take notice that on October 16, 1998, Constellation Energy Source, Inc. (CES), tendered for filing an amendment to its October 14, 1998, application filed in the above-referenced docket.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER99–234–000]

Take notice that on October 19, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Southern Company Energy Marketing (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule No. 3, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 14, 1998, for Southern Company Energy Marketing Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Black Hills Corporation

[Docket No. ER99–236–000]

Take notice that on October 19, 1998, Black Hills Corporation which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills), tendered for filing an Umbrella Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc.

Black Hills requests that the Agreements be made effective on October 14, 1998.

Copies of the filing were provided to the regulatory commission of each of the states of Montana, South Dakota, and Wyoming.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company; (Allegheny Power)

[Docket No. ER99–237–000]

Take notice that on October 19, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power or AP), tendered for filing Amendment No. 2, to AP's Pro Forma Open Access Transmission Tariff to update the Tariff to include current information and Commission approved practices.

Allegheny Power requests an October 15, 1998, effective date for this amendment.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER99–240–000]

Take notice that on October 19, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a

Power Sales Tariff, Service Agreement under which Enserch Energy Services, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 29, 1998.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER99–241–000]

Take notice that on October 19, 1998, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Consumers Energy Company and The Detroit Edison Company (referred to collectively as the Michigan Companies), the Transmission Customers. Services are being provided under the FirstEnergy System's Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under the Service Agreement is October 1, 1998, for the above mentioned Service Agreement in this filing.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER99–242–000]

Take notice that on October 19, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated October 8, 1998 (the Service Agreement), between Statoil Energy Trading, Inc. (SETI) and OVEC.

OVEC proposes an effective date of October 8, 1998, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to SETI.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon SETI.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–243–000]

Take notice that on October 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entitles (Meter Service Agreement) between the ISO and the Monsanto Company (Monsanto) for acceptance by the Commission.

The ISO states that this filing has been served on Monsanto and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of October 13, 1998.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas and Electric Corporation

[Docket No. ER99–245–000]

Take notice that on October 19, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Amerada Hess Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff), accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11 and an effective date of September 30, 1998 for the service agreement.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. ER99–246–000]

Take notice that on October 19, 1998, American Ref-Fuel Company of Delaware Valley, L.P., tendered for filing notice of succession of American Ref-Fuel Company of Delaware County, L.P. to report its name change to American Ref-Fuel Company of Delaware Valley, L.P.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company; (Allegheny Power)

[Docket No. ER99–249–000]

Take notice that on October 19, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 6 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of October 16, 1998, to Baltimore Gas and Electric Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER99–250–000]

Take notice that on October 19, 1998, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Tucson Electric Power Company (TEP), dated October 12, 1998, for Non-Firm Service. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date of February 17, 1997, for the service agreement.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Nancy Lampton

[Docket No. ID–3245–000]

Take notice that on October 6, 1998, Nancy Lampton (Applicant) tendered for filing with the Federal Energy Regulatory Commission an application under Section 305(b) of the Federal Power Act to hold the following positions: Director—Baltimore Gas and Electric Company, Director—Bank One Kentucky, N.A.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. U.S. Department of Energy, Southwestern Power Administration

[Docket No. NJ98–2–000]

Take notice that on October 16, 1998, Southwestern Power Administration tendered for filing a change to its Standards of Conduct with Partial Waiver in compliance with the Commission's order in this docket issued on September 18, 1998, 84 FERC 61,257. This filing covers services in excess of those required to fulfill deliveries of Federal Power in accordance with Southwestern's mission under Section 5 of the Flood Control Act of 1944.

The Commission's order granted Southwestern's request for waiver of the separation of functions requirements and directed Southwestern to submit revised Standards of Conduct. Southwestern has complied with the Commission's order to assure non-discriminatory, non-preferential application of the open-access tariff provisions covered by this filing.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Big Rivers Electric Corporation

[Docket No. NJ98–5–000]

Take notice that on October 15, 1998, Big Rivers Electric Corporation (Big Rivers) submitted for filing a revised Standard of Conduct pursuant to 18 CFR 37.4 in compliance with the Commission's September 18, 1998 order in Docket No. NJ98–5–000 reported at 84 FERC ¶ 61,257 (1998). These Standards of Conduct relate to Big Rivers' implementation of its open access transmission tariff, which tariff was found to constitute a reciprocal tariff in a declaratory order issued by the Commission on September 18, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. OA96–138–005]

Take notice that on October 16, 1998, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing revised tariff sheets in compliance with the Commission's September 18, 1998 letter order in this proceeding.

The September 18 order approved a settlement resolving all of the issues in this proceeding that were not reserved for hearing. The order directed Con Edison to file revised tariff sheets reflecting the approved settlement rates effective as of July 9, 1996. Con Edison states that the revised tariff sheets conform to the terms of the approved settlement agreement.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Atlantic City Electric Company

[Docket No. OA97–97–002

Take notice that on October 19, 1998, Atlantic City Electric Company tendered for filing revised Standards of Conduct in compliance with the Commission's September 18, 1998 Order.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Delmarva Power & Light Company

[Docket No. OA97–467–002

Take notice that on October 19, 1998, Delmarva Power & Light Company tendered for filing revised Standards of Conduct in compliance with the Commission's September 18, 1998 Order.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Coso Finance Partners (Navy I Facility)

[Docket No. QF84–327–005

On October 16, 1998, Coso Finance Partners, 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying small power production facility on July 30, 1984 in Docket No. QF84–327–000 and recertified the facility in Docket Nos. QF84–327–001 and QF84–327–003. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Coso Energy Developers (BLM Facility)

[Docket No. QF86–590–007]

On October 16, 1998, Coso Energy Developers, 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying small power production facility in 1986 in Docket No. QF86–590–000 and recertified the facility in Docket Nos. QF86–590–001, –003 and –005. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Coso Power Developers (Navy II Facility)

[Docket No. QF86–591–007]

On October 16, 1998, Coso Power Developers, 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying small power production facility on August 6, 1986 in Docket No. QF86–591–000 and recertified the facility in Docket Nos. QF86–591–001 to –003 and –005. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Norcon Power Partners L.P.

[Docket No. QF89–299–004]

On October 16, 1998, Norcon Power Partners L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) and (d)(2) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on October 23, 1989, in Docket No. QF89–299–000. Recertification is being sought to reflect a change in the status of one of the owners of the facility.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28930 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–10–000, et al.]

Compañía Hidroeléctrica Doña Julia S. de R.L., et al.; Electric Rate and Corporate Regulation Filings

October 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Compañía Hidroeléctrica Doña Julia S. de R.L.

[Docket No. EG99–10–000]

Take notice that on October 13, 1998, Compañía Hidroeléctrica Doña Julia S. de R.L. (Doña Julia), c/o ERI Services, Inc. International, 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Dona Julia is a Costa Rican limited liability company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in Costa Rica. The eligible facilities will consist of an approximately 18 MW hydroelectric generation project and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. South Eastern Electric Development Corporation

[Docket No. EG99–11–000]

Take notice that on October 14, 1998, South Eastern Electric Development Corporation (Applicant), 1585 Broadway, New York, NY 10036–8293, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Delaware Corporation, intends to own and/or operate an eligible facility in Alabama. These facilities will consist of two 50 MW Pratt 7 Whitney FT4C–1 gas turbine generating units, as well as interconnecting transmission facilities necessary to effect sales of electric energy at wholesale.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. North American Energy Services Company

[Docket No. EG99–12–000]

Take notice that on October 15, 1998, North American Energy Services Company, a Washington corporation (Applicant), with its principal executive office at Issaquah, Washington, filed with Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant has entered into an agreement for operation and maintenance services with Denver City Energy Associates, L.P., a Delaware limited partnership, to operate and maintain an electric generating facility located at or near Denver City, Texas (the Project). Project facilities include a 486-megawatt, gas-fired, dispatchable, combined-cycle electric generating facility, and related transmission and interconnection facilities and equipment; all of which will be an eligible facility.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Entergy Nuclear Generation Company

[Docket No. EG99–13–000]

Take notice that on October 14, 1998, Entergy Nuclear Generation Company, 1340 Echelon Parkway, Jackson, Mississippi, 39213, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The applicant is a corporation that is engaged directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant contemplates that the eligible facilities to be owned and/or operated by it will consist primarily, if not exclusively, of nuclear powered generating stations.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Murphy Oil USA, Inc.; Strategic Power Management, Inc.; Thicksten Grimm Burgum, Inc.; Power Exchange Corporation; AMVEST Coal Sales, Inc.; Bruin Energy, Inc.; Monterey Consulting Associates, Inc.; Main Public Service Company; ProLiance Energy, LLC; LS Power Marketing, LLC

[Docket Nos. ER97–610–006; ER96–2591–009; ER96–2241–009; ER95–72–014; and ER95–72–015; ER97–464–008; ER98–538–004; ER96–2143–008; ER99–178–000; ER97–420–007; and ER96–1947–002]

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 13, 1998, Murphy Oil USA, Inc. filed certain information as required by the Commission's January 26, 1997 order in Docket No. ER97–610–000.

On October 13, 1998, Strategic Power Management, Inc. filed certain information as required by the Commission's September 13, 1996 order in Docket No. ER96–2591–000.

On October 13, 1998, Thicksten Grimm Burgum, Incorporated filed certain information as required by the Commission's September 16, 1996 order in Docket No. ER96–2241–000.

On October 13, 1998, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995 order in Docket No. ER95–72–000.

On October 13, 1998, AMVEST Coal Sales, Inc. filed certain information as

required by the Commission's December 16, 1996 order in Docket No. ER97–464–000.

On October 13, 1998, Bruin Energy, Inc. filed certain information as required by the Commission's December 18, 1997 order in Docket No. ER98–538–000.

On October 13, 1998, Monterey Consulting Associates, Inc. filed certain information as required by the Commission's August 8, 1996 order in Docket No. ER96–2143–000.

On October 13, 1998, Main Public Service Company filed certain information as required by the Commission's May 31, 1995 order in Docket No. ER95–851–000.

On October 14, 1998, ProLiance Energy, LLC filed certain information as required by the Commission's January 16, 1997 order in Docket No. ER97–420–000.

On October 14, 1998, LS Power Marketing, LLC filed certain information as required by the Commission's August 5, 1996 order in Docket No. ER96–1947–000.

6. AMVEST Power, Inc.; Rainbow Power USA LLC; The Utility-Trade Corp.; Alliance Power Marketing Inc.; Prairie Winds Energy; Tennessee Power Company; Utility-2000 Energy Corp.; LS Power Marketing, LLC

[Docket Nos. ER97–2045–006; ER98–3012–001; ER95–1382–015; ER96–1818–011; ER95–1234–010; ER95–581–014; ER95–187–015; and ER96–1947–009]

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 13, 1998, AMVEST Power, Inc. filed certain information as required by the Commission's April 15, 1997 order in Docket No. ER97–2045–000.

On October 14, 1998, Rainbow Power USA LLC filed certain information as required by the Commission's July 1, 1996 order in Docket No. ER98–3012–000.

On October 14, 1998, The Utility-Trade Corp. filed certain information as required by the Commission's August 25, 1995 order in Docket No. ER95–1382–000.

On October 14, 1998, Alliance Power Marketing Inc. filed certain information as required by the Commission's June 24, 1996 order in Docket No. ER96–1818–000.

On October 14, 1998, Prairie Winds Energy filed certain information as required by the Commission's August 28, 1995 order in Docket No. ER95–1234–000.

On October 14, 1998, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995 order in Docket No. ER95–581–000.

On October 14, 1998, Utility-2000 Energy Corp. filed certain information as required by the Commission's December 29, 1994 order in Docket No. ER95–187–000.

On October 14, 1998, LS Power Marketing, LLC filed certain information as required by the Commission's August 5, 1996 order in Docket No. ER96–1947–000.

7. PJM Interconnection, L.L.C.

[Docket No. ER98–3506–001]

Take notice that on October 15, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing its compliance filing in accordance with the Commission's order in PJM Interconnection, L.L.C., 84 FERC ¶ 61,224 (1998).

PJM requests an effective date for the tariff revisions submitted with the compliance filing of September 17, 1998, consistent with the effective date of the previously accepted provisions in the above-captioned docket.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER98–4606–000]

Take notice that on September 22, 1998, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Michigan Electric Power Coordination Center as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of September 21, 1998. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Michigan Electric Power Coordination Center and the South Carolina Public Service Commission.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER99–202–000]

Take notice that on October 15, 1998, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing changes to its Open Access Transmission Tariff (OATT), for the purpose of offering Market Access Service (MAS) and Extended Market Access Service (EMAS).

MidAmerican states that MAS will be an unbundled retail open access service available to certain retail industrial and commercial customers in Iowa and that EMAS will be an unbundled retail open access service available to certain residential and small business customers in Iowa on a pilot program basis. These services will be offered through the OATT changes filed in this proceeding and Price Schedules MAS and EMAS which have been filed with the Iowa Utilities Board (IUB).

MidAmerican proposes an effective date of January 1, 1999, for the OATT changes.

Copies of the filing were served on all customers having service agreements with MidAmerican under the OATT, the IUB, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all parties to IUB Docket Nos. TF–97–229 and TF–98–113.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER99–203–000]

Take notice that on October 15, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing separate market-based sales tariffs for each of itself and its Missouri Public Service, WestPlains Energy-Kansas, and WestPlains Energy-Colorado operating divisions.

UtiliCorp requests that the Commission accept the tariffs for filing to become effective on November 9, 1998.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–204–000]

Take notice that on October 15, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with TransAlta Energy Marketing (U.S.) Inc., (2 agreements, dated September 14, 1998 for Non-Firm and Firm Service), and Sempra Energy Trading Corporation, (1 agreement, dated September 28, 1998 for Non-Firm Service) . PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Electric Power Company, Inc.

[Docket No. ER99–205–000]

Take notice that on October 15, 1998, Vermont Electric Power Company, Inc. (VELCO), tendered for filing revisions to tariff sheets in VELCO's Open Access Transmission Tariff (Tariff). The Tariff was filed in Docket No. OA97–696–000 to comply with Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997). The revisions to VELCO's Tariff are designed to comply with the Commission's April 20, 1998, order in Docket No. OA97–237 *et al.*, conditionally accepting the NEPOOL Open Access Transmission Tariff and the Restated NEPOOL Agreement. New England Power Pool, 83 FERC ¶ 61,045 (1998).

VELCO requests that the revised pages to its Tariff filed in this docket be made effective on the same date as the effective date of the NEPOOL Tariff.

VELCO is serving this filing on each of the Vermont distribution utilities served by VELCO, intervenors in VELCO's open access transmission tariff proceedings in Docket Nos. OA97–696–000, OA97–7–000 and ER97–1930–000, the Vermont Department of Public Service, the Vermont Public Service Board and New Hampshire Electric Cooperative, Inc.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Company

[Docket No. ER99–206–000]

Take notice that on October 15, 1998, West Texas Utilities Company (WTU), tendered for filing a Rate Schedule COC–8 replacing currently effective Rate Schedule COC–7, FERC Rate Schedule No. 40, pursuant to which WTU provides service to the City of Coleman, Texas (Coleman). Rate Schedule COC–8 reflects a reduced Customer Service Charge from $8,425 to $250 per month. In all other respects, the rates, terms and conditions for service to Coleman remain the same.

WTU requests an effective date for Rate Schedule COC–8 of August 13, 1998. Accordingly, WTU requests waiver of the Commission's notice requirements.

A copy of this filing has been served on Coleman and the Public Utility Commission of Texas.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER99–207–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an unexecuted electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) and an unexecuted electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8).

Wisconsin Electric respectfully requests an effective date September 20, 1998, for both agreements.

Copies of the filing have been served on Ameren Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Services Company

[Docket No. ER99–208–000]

Take notice that on October 15, 1998, Alliant Services Company (Alliant), tendered for filing an executed Service Agreements for short-term firm point-to-point transmission service, establishing Enron Power Marketing, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Services Company transmission tariff.

Alliant Services Company requests an effective date of October 15, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–210–000]

Take notice that on October 15, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Energetix, Inc. This Transmission Service Agreement specifies that Energetix, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Energetix, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Energetix, Inc. as the parties may mutually agree.

NMPC requests an effective date of October 9, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Energetix, Inc.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Great Bay Power Corporation

[Docket No. ER99–211–000]

Take notice that on October 15, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between TransCanada Power Marketing Ltd. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective October 8, 1998.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Electric Power Company

[Docket No. ER99–212–000]

Take notice that on October 15, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and The Detroit Edison Company and Consumers Energy Company (collectively The Michigan Companies). The agreement establishes the Michigan Companies as a customer under Wisconsin Energy Corporation Operating Companies' transmission service tariff (FERC Electric Tariff, Original Volume No. 1).

Wisconsin Electric respectfully requests an effective date sixty days after date of filing. Wisconsin Electric is authorized to state that the Michigan Companies join in the requested effective date.

Copies of the filing have been served on the Michigan Companies, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. E. James Macias

[Docket No. ID–3241–000]

Take notice that on September 23, 1998, E. James Macias (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions: Governor—California Independent System Operator Corporation; Senior Vice President and General Manager—Pacific Gas and Electric Company.

Comment date: October 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, Monongahela Power Company; The Potomac Edison Company; West Penn Power Company; American Electric Power Service Corporation; Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Ohio Power Company; Wheeling Power Company; Boston Edison Company; Central Hudson Gas & Electric Corporation; Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., Consolidated Edison Company of New York, Inc.; El Paso Electric Company, Illinois Power Company; MidAmerican Energy Company, New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Northeast Utilities Service Company; Connecticut Light & Power Company; Holyoke Water Power Company; Holyoke Power & Electric Company; Public Service Company of New Hampshire; Western Massachusetts Electric Company, Public Service Electric & Gas Company, Puget Sound Energy, Inc.; Southern California Edison Company and, Wisconsin Electric Power Company

[Docket Nos. OA97–117–005, OA97–117–007, OA97–408–006; OA97–431–006, 0A97–125–006, OA97–459–006, OA97–279–006, OA97–430–006, OA97–126–006, 0A97–313–006, OA97–278–006, OA97–158–006, OA97–284–006, OA97–429–004, OA97–449–006, OA97–445–006, and Docket No. OA97–216–006]

Take notice that the companies listed, in the above-captioned dockets submitted revised standards of conduct, submitted compliance reports and/or revised the organizational charts and job descriptions posted on OASIS in response to the Commission's July 31, 1998, order on standards of conduct. [1]

The July 31, 1998, order accepted the standards of conduct submitted by Central Hudson Gas & Electric Corporation and El Paso Electric Company but required them to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

In addition, on August 26, 1998, Allegheny Power Service Corporation, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (collectively ''APS'') submitted revised standards in response to the July 31, 1998 order. On September 29, 1998, in Docket No. OA97–117–007, APS submitted modified standards of conduct to reflect changes in its organizational structure. The September 29, 1998, standards supersede earlier filings. APS states that the changes are also reflected in the organizational charts and job descriptions posted on OASIS.

Comment date: November 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28928 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4190–001, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 21, 1998.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER98–4190–001]

Take notice that on October 16, 1998, Entergy Services, Inc., on behalf of System Energy Resources, Inc. (SERI) and Entergy Mississippi, Inc., filed, pursuant to the Commission's October 2, 1998 Order (85 FERC ¶ 61,018) a corrected Attachment A to the August 11, 1998 filing in this proceeding.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Aquila Power Corporation

[Docket No. ER98–4516–000]

Take notice that on October 15, 1998, Aquila Power Corporation filed an amendment to its September 10, 1998 filing in this docket.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Sunlaw Cogeneration Partners I

[Docket No. ER99–213–000]

Take notice that on October 16, 1998, Sunlaw Cogeneration Partners I (Sunlaw) petitioned the Commission for acceptance of FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Sunlaw intends to market electric power and energy at wholesale. Sunlaw is not in the business of transmitting electric power.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company

[Docket No. ER99–214–000]

Take notice that on October 16, 1998, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 14, 1998 with Commodore Gas Co. d/b/a Commodore Electric under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Commodore Gas Co. d/b/a Commodore Electric as a customer under the Tariff.

DLC requests an effective date of January 1, 1999 for the Service Agreement.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER99–215–000]

Take notice that on October 16, 1998, PacifiCorp tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Long-term Service Agreements with Bonneville Power Administration (BPA) and Eugene Water & Electric Board (EWEB) under PacifiCorp's FERC

[1] Allegheny Power Service Corporation, 84 FERC ¶ 61,131; *Order on reh'g and clarification*, 84 ¶ 61,316 (1998).

Electric Tariff, First Revised Volume No. 12.

Copies of this filing were served to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and assign an effective date of October 19, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Electric Transmission, a Division of Duke Energy Corporation

[Docket No. ER99–217–000]

Take notice that on October 16, 1998, Duke Electric Transmission, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement for Firm Point-to-Point Transmission Service between Duke Electric transmission, a division of Duke Energy Corporation and Statoil Energy Trading, Inc. (Statoil), dated as of September 1, 1998.

Duke requests that the Agreement be made effective as a rate schedule as of September 21, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Alliant Services Company

[Docket No. ER99–219–000]

Take notice that on October 16, 1998, Alliant Services Company, tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service, establishing Consolidated Water Power Company as a Point-to-Point Transmission Customer under the terms of the Alliant Services Company transmission tariff.

Alliant Services Company requests an effective date of September 1, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. NYSEG Solutions, Inc.

[Docket No. ER99–220–000]

Take notice that on October 16, 1998, NYSEG Solutions, Inc. (NYSEG Solutions) tendered for filing with the Federal Energy Regulatory Commission NYSEG Solutions' Electric Power Sales Tariff, FERC Electric Rate Schedule No. 1, which permits NYSEG Solutions to make wholesale power sales at market-based rates.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER99–221–000]

Take notice that on October 16, 1998, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission NYSEG's Electric Power Sales Tariff, FERC Electric Rate Schedule, Original Volume No. 1, which permits NYSEG to make wholesale power sales at market-based rates.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Texas-New Mexico Power Company

[Docket No. ER99–222–000]

Take notice that on October 16, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing an umbrella service agreement for short-term nonfirm energy transactions of one year or less between TNMP, as seller, and Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., purchasers, in accordance with TNMP's rate schedule for sales of electricity at market-based rates.

TNMP requests that the Commission permit their Agreement to become effective as of October 16, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Texas-New Mexico Power Company

[Docket No. ER99–223–000]

Take notice that on October 16, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing an Umbrella Service Agreement for Short-Term Nonfirm Energy Transactions of One Year or Less between TNMP, as seller, and Southern Company Energy Marketing L.P., purchaser, in accordance with TNMP's rate schedule for sale of electricity at market-based rates.

TNMP requests that the Commission permit their Agreement to become effective as of October 16, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Texas-New Mexico Power Company

[Docket No. ER99–224–000]

Take notice that on October 16, 1998, Texas-New Mexico Power Company (TNMP), tendered for filing an Umbrella Service Agreement for Short-Term Nonfirm Energy Transactions of One Year or Less between TNMP, as seller, and Southwestern Public Service Company, purchaser, in accordance with TNMP's rate schedule for sales of electricity at market-based rates.

TNMP requests that the Commission permit the tendered Agreement to become effective October 16, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER99–226–000]

Take notice that on October 16, 1998, Commonwealth Edison Company (ComEd) submitted for filing Firm Service Agreements for Firm Point-to-Point Transmission Service with Commonwealth Edison Company, in the wholesale merchant function (ComEd WMD) and two Service Agreements For Firm Point-To-Point Transmission Service with Wisconsin Electric Power Company (WEPCO), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 1998 for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on ComEd WMD, WEPCO and the Illinois Commerce Commission.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER99–227–000]

Take notice that on October 16, 1998, Commonwealth Edison Company (ComEd) tendered for filing Service Agreements for Short-Term Sales establishing SCANA Energy Marketing, Inc. (SCANA) and Enserch Energy Service Inc. (EESI) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of September 30, 1998 for the service agreements and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on SCANA, EESI and the Illinois Commerce Commission.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Oklahoma Gas and Electric Company

[Docket No. ER99–228–000]

Take notice that on October 16, 1998, Oklahoma Gas and Electric Company (OG&E) tendered for filing a service agreement for parties to take service under its short-term power sales agreement.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER99–229–000]

Take notice that on October 16, 1998, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with Arizona Public Service Company (dated October 12, 1998) and e prime, Inc. (dated October 8, 1998). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Arizona Public Service Company, e prime, Inc., and to the New Mexico Public Utility Commission.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Alliant Services Company

[Docket No. ER99–230–000]

Take notice that on October 16, 1998, Alliant Services Company (Alliant Services) filed an application for an order authorizing Alliant Services to make wholesale sales of electric power at market-based rates as agent for, and on behalf of, the Interstate Energy Operating Companies, including sales not involving the generation or transmission facilities of the Interstate Energy Operating Companies.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER99–231–000]

Take notice that on October 16, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Letter Agreement between Entergy Services, Inc. and Sam Rayburn G&T Electric Cooperative, Inc. for the removal of an old delivery point at Old Long John Station on Entergy Gulf States' 138 kV Line No. 50, north of Dayton, Texas.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER99–232–000]

Take notice that on October 16, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Letter Agreement between Entergy Services, Inc. and Sam Rayburn G&T Electric Cooperative, Inc. for the installation of a new delivery point at New Long John Station on Entergy Gulf States' 138 kV Line No. 50, north of Dayton, Texas.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Montaup Electric Company

[Docket No. ER99–233–000]

Take notice that on October 16, 1998, Montaup Electric Company (Montaup) tendered for filing a proposed Wholesale Market Tariff that would permit it to make sales of electric capacity and energy at market-based rates.

Montaup seeks a waiver of the Commission's regulations in order to permit its filing to be accepted and made effective as of December 1, 1998.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Central Maine Power Company

[Docket No. ER99–238–000]

Take notice that on October 16, 1998, Central Maine Power Company (CMP) tendered for filing, pursuant 18 CFR 35.13, the revised CMP open access transmission tariff (OATT).

CMP requests that the CMP OATT become effective contemporaneously with the revised NEPOOL Tariff filed July 22, 1998.

CMP served copies of the filing upon the Maine Public Service Commission and those listed on the Commission's official service list.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The United Illuminating Company

[Docket No. ER99–248–000]

Take notice that on October 16, 1998, The United Illuminating Company (UI) tendered for filing proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, (Tariff), as previously amended, to comply with the Commission's April 20, 1998 Order in *New England Power Pool*, 83 FERC ¶ 61,045 (1998).

UI served a copy of this filing upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–171–000 and upon the Connecticut Department of Public Utility Control.

Comment date: November 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28929 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-time Information System (OASIS) and Standards of Conduct; Notice of Filing and Request for Comments on Oasis How Group's Proposed Transition Plan for Migrating From Oasis Phase 1 to Oasis Phase 1–A and on Proposed Oasis Phase 1–A Audit Reporting Experiment

October 23, 1998.

Take notice that on October 14, 1998, the OASIS How Working Group (How Group) filed a transmittal letter and accompanying documents with the

Commission that included a proposed transition plan for migrating from OASIS Phase 1 to OASIS Phase 1–A and a proposal for an OASIS Phase 1–A audit reporting experiment. The proposed transition plan recommends a sequence of steps for the transition to OASIS Phase 1–A to allow adequate testing, training, an orderly transfer of reservation records, and a minimal disruption of business activities. The proposed audit experiment is designed to test the use of advanced audit capabilities. The How Group has requested an expedited review of its proposals.

We invite written comments on the How Group's proposals on or before November 9, 1998. Any person desiring to submit comments should file an original and 14 paper copies and one copy on a computer diskette in WordPerfect 6.1 format or in ASCII format with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The comments must contain a caption that references Docket No. RM95–9–003.

Copies of this filing are on file with the Commission and are available for public inspection. The filing will also be posted on the Commission Issuance Posting System (CIPS), an electronic bulletin board and World Wide Web (at WWW.FERC.FED.US) service, that provides access to the texts of formal documents issued by the Commission. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28944 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Albany, OR; Notice of Availability of Final Environmental Assessment

October 23, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the City of Albany, Oregon Hydroelectric Project. The project is located on the South Santiam River, Albany-Santiam canal, and Calapooia River in the cities of Lebanon and Albany, Linn County, Oregon.

On March 24, 1998, the Commission staff issued a draft environmental assessment for the project and requested that comments be filed with the Commission within 30 days. Comments were filed by two entities and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28939 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready For Environmental Analysis

October 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* 2620–005.

c. *Date Filed:* March 9, 1998.

d. *Applicant:* Lockhart Power Company.

e. *Name of Project:* Lockhart Hydroelectric Project.

f. *Location:* On the Broad River in Union, Chester, York, and Cherokee counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Leslie Anderson, General Manager, Lockhart Power Company, 420 River Street, Lockhart, South Carolina 29364, (864) 545–2211.

i. *FERC Contact:* Charles R. Hall, 202–219–2853, or E-mail at charles.hall@ferc.fed.us

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* See attached paragraph.

k. *Status of Environmental Analysis:* The application is now ready for environmental analysis—see attached paragraph D10.

l. *Brief Description of Project:* The existing project consists of: (1) a 16-foot-high, concrete gravity dam; (2) a 7.5-mile-long, 300-acre reservoir; (3) a 7,497-foot-long canal; (4) a powerhouse containing five turbine-generator units with a total installed capacity of 15,200 kilowatts (kW), proposed for upgrading to 18,000 kW; (5) a 1,500-foot-long tailrace; and (6) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at: 888 First St., NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and

the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28938 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

October 23, 1998.

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 2107.

c. *Date filed:* September 25, 1998.

d. *Submitted By:* Pacific Gas and Electric Company, current licensee.

e. *Name of Project:* Poe.

f. *Location:* On the North Fork Feather River, Butte County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* October 1, 1953.

i. *Expiration date of original license:* September 30, 2003.

j. The project consists of a dam, a reservoir, a tunnel, a penstock, a powerhouse with an installed capacity of 120 Megawatts. Poe dam and reservoir occupy lands within the Plumas National Forest.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Pacific Gas and Electric Company, 245 Market Street, Room 1103, San Francisco, CA 94105, Attention: John Gourley, (415) 972–5772.

l. *FERC contact:* Hector M. Perez (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–28937 Filed 10–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Notice of Order Confirming and Approving an Extension of the Firm Electric Service Rate for Rate Order No. WAPA–82

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Loveland Area Projects (LAP) firm electric service rate, Rate Order No. WAPA–51, through January 31, 2001. The existing firm electric service rate will expire January 31, 1999. This notice of an extension of a rate is issued pursuant to 10 CFR 903.23. Rate Order No. WAPA–51 is extended under Rate Order No. WAPA–82.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 490–7442, or e-mail (dpayton@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power rate adjustments at 10 CFR part 903, Western's LAP firm electric service rate was submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm electric service rate for the LAP. The LAP consists of the Pick-Sloan Missouri Basin Program, Western Division and the Fryingpan-Arkansas Project. The rate, Rate Order No. WAPA–51, was approved for the 5-year period beginning February 1, 1994, and ending January 31, 1999.

Western proposed to extend the existing rate of $2.85/kilowattmonth for capacity and the rate of 10.85 mills/kilowatthour for energy. The existing rates are sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost-evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The Fryingpan-Arkansas Project recorded its first principal payment of $2.8 million on the investment in FY 1996. In FY 1997, the principal payment for this project was $2.9 million. No principal payments were projected during this time period in Docket No. EF94–5181–000. The total revenue requirement of $44.3 million is sufficient to cover the expenses and capital requirements through January 31, 2001. Western, therefore, has decided to extend the existing rate pursuant to 10 CFR 903.23.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of an extension of the firm electric service rate was published in the **Federal Register** on August 18, 1998. Western is submitting the notice of rate order 30 days after that publication.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–82, which extends the existing Loveland Area Projects firm electric service Rate Schedule L-F4 on an interim basis through January 31, 2001.

Dated: October 16, 1998.

Elizabeth A. Moler,

Deputy Secretary.

This rate was established pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)), through which the power marketing functions of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the Delegation Order and the Department of Energy rate extension procedures at 10 CFR part 903.

BACKGROUND

In the order issued July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed into effect on a final basis the firm electric service rate for the Loveland Area Projects (LAP), Rate Order No. WAPA–51. The rate was approved for the period from February 1, 1994, through January 31, 1999.

Discussion

The LAP consists of the Pick-Sloan Missouri Basin Program, Western Division and the Fryingpan-Arkansas Project. The LAP existing rate is $2.85/kilowattmonth for capacity and 10.85 mills/kilowatthour for energy. The existing rate is sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost-evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The Fryingpan-Arkansas Project recorded its first principal payment of $2.8 million on the investment in FY 1996. In FY 1997, the principal payment for this project was $2.9 million. No principal payments were projected during this time period in Docket No. EF94–5181–000. The total revenue requirement of $44.3 million is sufficient to cover the expenses and capital requirements through January 31, 2001.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of an extension of the firm electric service rate was published in the **Federal Register** on August 18, 1998. Western is submitting the notice of rate order 30 days after that publication.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for the period effective February 1, 1999, through January 31, 2001, the existing Rate Schedule L–F4 for the firm electric service rate for the Loveland Area Projects.

Dated: October 16, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–28911 Filed 10–28–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program-Eastern Division—Notice of Order Confirming and Approving an Extension of the Firm Power Service and Firm Peaking Power Service Rates for Rate Order No. WAPA–83

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: This action is to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates, Rate Order No. WAPA–60, through January 31, 2001. The existing firm power service and firm peaking power service rates will expire January 31, 1999. This notice of an extension of rates is issued pursuant to 10 CFR 903.23. Rate Order No. WAPA–60 is extended under Rate Order No. WAPA–83.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, PO Box 35800, Billings, MT 59107–5800, telephone (406) 247–7388, or e-mail (riehl@wapa.gov).

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in power rate adjustments at 10 CFR part 903, Western's P–SMBP–ED firm power service and firm peaking power service rates were submitted to FERC for confirmation and approval on January 20, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and firm peaking power service rates for the P–SMBP–ED. The rates, Rate Order No. WAPA–60, were approved for the 5-year period beginning February 1, 1994, and ending January 31, 1999.

Western proposed to extend the existing rate of $3.20/kilowattmonth for capacity and the rate of 8.32 mills/kilowatthour for energy. The existing rates are sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost-evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total revenue requirement of $135.2 million is sufficient to cover the expenses and capital requirements through January 31, 2001. Western, therefore, has decided to extend the

existing rates pursuant to 10 CFR 903.23.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of an extension of the firm power service and firm peaking power service rates was published in the **Federal Register** on August 18, 1998. Western is submitting the notice of rate order 30 days after that publication.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–83, which extends the existing P–SMBP–ED firm power service and firm peaking power service Rate Schedules P–SED–F6 and P–SED–FP6 on an interim basis through January 31, 2001.

Dated: October 16, 1998.

Elizabeth A. Moler,

Deputy Secretary.

This rate was established pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)), through which the power marketing functions of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate extension is issued pursuant to the Delegation Order and the Department of Energy rate extension procedures at 10 CFR part 903.

Background

In the order issued July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC confirmed, approved, and placed in effect on a final basis the firm power service and firm peaking power service rates for the Pick-Sloan Missouri Basin Program-Eastern Division, Rate Order No. WAPA–60. The rates were approved for the period from February 1, 1994, through January 31, 1999.

Discussion

The existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) rate is $3.20/kilowattmonth for capacity and 8.32 mills/kilowatthour for energy. The existing rates are sufficient to recover project expenses (including interest) and capital requirements through January 31, 2001. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost-evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in fiscal year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total revenue requirement of $135.2 million is sufficient to cover the expenses and capital requirements through January 31, 2001.

In accordance with 10 CFR 903.23(a)(2), Western did not have a consultation and comment period. The notice of an extension of the firm power service and firm peaking power service rates was published in the **Federal Register** on August 18, 1998. Western is submitting the notice of rate order 30 days after that publication.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby extend for a period effective February 1, 1999, through January 31, 2001, the existing Rate Schedules P–SED–F6 for firm power service and P–SED–FP6 for firm peaking power service for the Pick-Sloan Missouri Basin Program-Eastern Division.

Dated: October 16, 1998.

Elizabeth A. Moler,

Deputy Secretary.

[FR Doc. 98–28912 Filed 10–28–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Survey of the Chlorinated Aliphatics Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Survey of the Chlorinated Aliphatics Industry. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at *http://www.epa.gov/icr/icr.htm*, or by e-mail at *farmer.sandy@epamial.epa.gov*, and refer to EPA ICR No. 1866.01.

SUPPLEMENTARY INFORMATION:

Title: Survey of the Chlorinated Aliphatics (EPA ICR No. 1866.01). This is a new collection.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries during the rest of this fiscal year through FY 2000, primarily for the purpose of developing hazardous waste listing determinations as part of a rulemaking effort under sections 3001 and 3004 of the Resource Conservation and Recovery Act (RCRA). Information collected under authority of this ICR specifically will be used to establish and expand an information data base with regard to hazardous waste generation and management by industry to support a goal of more effective regulation under sections 3001 and 3004 of RCRA.

The information acquired through the Industry Studies Program has contributed to the effective development and implementation of the hazardous waste regulatory program. The ICR, once approved, will allow continued and expanded data collection for the following program areas:

- Listing
- Land Disposal Restrictions (LDR) and Capacity
- Source Reduction and Recycling
- Risk Assessment

To support these hazardous waste program areas, EPA has been conducting surveys and site visits for the chlorinated aliphatics industry since 1992 under authority granted under RCRA section 3007 and OMB #2050–0042. Responses to the surveys were received and site visits conducted in early 1993 to collect data for development of hazardous waste rulemakings as required by a consent decree signed December 9, 1994, which resulted from the *EDF* v. *Reilly* case.

For the chlorinated aliphatics industry that is the subject of this information collection, the main data to be collected will be clarifications to updated survey information, and possibly site visits if necessary.

The information collected will be used primarily to determine if wastes from the chlorinated aliphatics industry should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

EPA anticipates that some data provided by respondents will be claimed as confidential business information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

Data will be collected from the chlorinated aliphatics industry that generate wastes that may be listed as hazardous. 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. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/18/98 (63 *FR* 33370); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of chlorinated aliphatics firms.

Estimated Number of Respondents: 25.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 548 hours.

Estimated Total Annualized Cost Burden: $6,526.

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 following addresses. Please refer to EPA ICR No. 1866.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 23, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–29014 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–4]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method and Receipt of Three New Applications for Reference Method Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation and receipt of applications.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of $PM_{2.5}$ in ambient air. Notice is also given that EPA has received three new applications for $PM_{2.5}$ reference method determinations under 40 CFR part 53.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies in determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new reference method for measuring $PM_{2.5}$ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for $PM_{2.5}$ is a manual monitoring method based on a particular commercially available $PM_{2.5}$ sampler. The newly designated method is identified as follows:

RFPS–1098–123, ''Thermo Environmental Instruments, Incorporated Model 605 ''CAPS'' Computer Assisted Particle Sampler,'' configured as a $PM_{2.5}$ reference method and operated with software version 1.02A, for 24-hour continuous sample periods, in accordance with the Model 605 Instruction Manual and with the requirements and sample collection filters specified in 40 CFR part 50, Appendix L.

An application for a reference method determination for the method based on the Thermo Environmental Instruments Model 605 sampler was received by the EPA on October 8, 1997, and a notice of the receipt of this application (then identified as Model 605/FH95–E) was published in the **Federal Register** on February 10, 1998. The method is available commercially from the applicant, Thermo Environmental Instruments, Incorporated, 8 West Forge Parkway, Franklin, Massachusetts 02038.

Test samplers representative of this method have been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be

available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (e.g., sample period or measurement range) specified in the applicable designation method description (see identification of the method above). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II (EPA/600/R–94/038b). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the designation application. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-registered facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Receipt of New Reference Method Applications

EPA is also hereby announcing that it has received three new applications for reference method determinations under 40 CFR part 53. Publication of a notice of receipt of such applications is required by § 53.5.

On July 6, 1998, EPA received an application from Andersen Instruments, Incorporated, 500 Technology Court, Smyrna, Georgia 30082, for a reference method determination for a $PM_{2.5}$ method based on that Company's Model $RAAS_{2.5}$–200 Audit Single Channel $PM_{2.5}$ Sampler. Another application was received on July 27, 1998, from URG Corporation, 116 South Merritt Mill Road, Chapel Hill, North Carolina 27514 for a reference method determination for a $PM_{2.5}$ method based on that Company's Models MASS100 Single Channel and MASS300 Multi Channel Sequential $PM_{2.5}$ Samplers. An application was received on August 10, 1998, from Rupprecht & Patashnick Company, Incorporated, 25 Corporate Circle, Albany, New York 12203 for a reference method determination for a $PM_{2.5}$ method based on that Company's Partisol® Model 2000 Audit Sampler.

If, after appropriate technical study, the Administrator determines that any or all of these methods should be designated as reference methods under 40 CFR part 53, notice thereof will be published in a subsequent issue of the **Federal Register**.

Correction

In a reference and equivalent method designation notice published in the **Federal Register** on August 3, 1998 (63 FR 41253), the description of one of methods designated contained an error in one of the measurement ranges. The correct description is as follows:

RFNA–0798–121, ''DKK Corporation Model GLN–114E Nitrogen Oxides Analyzer,'' operated within a temperature range of 20 to 30 degrees C on any of the following measurement ranges: 0–0.050, 0–0.100, 0–0.200, 0–0.500, and 0–1.000 ppm.

The Model GLN–114E analyzer is available from the applicant, DKK Corporation, 4–13–14, Kichijoji

Katamachi, Musashino-shi, Tokyo, 180, Japan.

Henry L. Longest II,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 98–29015 Filed 10–28–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–00557; FRL–6041–5]

Framework for Addressing Key Science Issues Presented by the Food Quality Protection Act (FQPA) as Developed Through the Tolerance Reassessment Advisory Committee (TRAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The notice announces a schedule and framework for EPA issuance of a series of science policies to implement provisions in the Food Quality Protection Act of 1996 (FQPA). The notice and comment approach described in this notice was created following discussion with the Tolerance Reassessment Advisory Committee (TRAC), a subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT), a committee established pursuant to the Federal Advisory Committee Act. Comments on individual interim science policy documents will be invited through separate notices in the **Federal Register** as outlined in the framework. While refining its approach to FQPA science policies, EPA will use the policies described in the interim documents when making decisions on pesticide actions.

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 Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VII. 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: Jeff Kempter, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; (703) 305–5448; kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION: The following documents are available from the EPA Home page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/):

1. This document.
2. A table entitled ''Framework for Refining FQPA Science Policy.''
3. A timeline entitled ''Schedule for Release of Guidance on Science Policy Issues.''

Copies of the above-mentioned table and timeline may also be obtained from the OPP docket at the location listed under ADDRESSES or by contacting Jeff Kempter at the telephone number listed above.

I. Background

A. Food Quality Protection Act (FQPA)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10–year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that data supporting pesticide registrations will remain up-to-date in the future.

B. Food Safety Advisory Committee (FSAC)

When FQPA took effect, EPA was immediately faced with having to implement new standards and requirements. The Agency established the FSAC as a subcommittee of the NACEPT to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). With the guidance and input of the FSAC, the Agency issued several key documents concerning how it would implement FQPA: (1) On January 31, 1997, Pesticide Registration Notice 97-1 entitled ''Agency Actions Under the Requirements of the Food Quality Protection Act'' provided an interim decision logic for making regulatory decisions; (2) the ''1996 Implementation Plan,'' made available in March 1997, described EPA's overall plan for implementing the requirements of FQPA; and (3) on August 4, 1997, a **Federal Register** notice entitled ''Raw and Processed Food Schedule for Pesticide Tolerance Reassessment'' announced a specific plan for conducting reassessments of tolerances in effect as of the passage of FQPA.

The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard and that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

C. Tolerance Reassessment Advisory Committee (TRAC)

Although the Agency has sought independent review and public participation on a wide variety of issues, the Agency has decided that the implementation process would benefit from a more thorough process of notice and comment on major science policy issues. As directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and a new subcommittee of

NACEPT, the TRAC, chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework document for addressing key science policy issues. This **Federal Register** notice is based on, but not identical to, the EPA staff paper #26 which is the draft framework document presented to the TRAC that identified the issues relating to these science policy issues.

The TRAC identified nine science policy issues it believed were key to the implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for public comment on each of the nine issues over the course of the next several months. EPA will issue **Federal Register** notices announcing the availability of each of these science policy documents for comment. Other opportunities for public involvement in the refinement of these policies may also be available, depending on the current status of the individual science policy. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP. This notice describing the framework briefly summarizes each of the nine science policy issues, the efforts underway to refine them, plans for notice and comment, and the timelines for completing refinements.

II. The Nine Science Policies

A. Science Policy 1: Applying the FQPA 10-Fold Factor

FQPA requires EPA to use an additional 10-fold factor when assessing a pesticide's dietary risk to take into account potential pre- and post-natal developmental toxicity and completeness of the data with respect to exposure and toxicity to infants and children. The additional FQPA factor may be reduced or removed only if, on the basis of reliable data, the factor used will be safe for children. (It should be noted that, under certain circumstances, the Agency may use a higher factor than the traditional 100-fold uncertainty factor, for example, because of a limited toxicity data base.) In assessing risk, the Office of Pesticide Programs (OPP) applies the 10-fold factor unless it determines, based on a weight-of-the-evidence evaluation of all reliable, available information on toxicity and exposure, that it should be modified.

The major science policy issue related to the 10-fold FQPA factor is the establishment of appropriate, clear, and transparent criteria for retaining or modifying the 10-fold factor. Another closely related issue is determining what constitutes a complete and reliable data base for toxicology and exposure data to assess risks to children.

In part, to address these issues, an intra-agency workgroup is looking at general considerations regarding the FQPA factor decisions such as: establishing procedures for consistency and documentation; ensuring the adequacy of the data set for decision-making; and establishing criteria for retaining or modifying the FQPA factor. This workgroup includes representatives of the Office of Research and Development, the Office of Children's Health Protection, the Office of Water, the Office of Solid Waste and Emergency Response, as well as the Office of Prevention, Pesticides and Toxic Substances. In addition, OPP has completed a draft Standard Operating Procedure (SOP) that provides procedural guidance at the working level for making recommendations for retaining or modifying the 10-fold factor.

In addition, EPA has solicited advice from the SAP. In October 1996, EPA first brought to the SAP a paper that described a ''weight-of-evidence'' approach for the 10x FQPA factor, that was developed prior to the passage of FQPA. In March 1998, the Agency brought OPP Health and Effects Division (HED) draft guidance on the application of the FQPA factor to the Panel. In July 1998, EPA updated the SAP on its progress in responding to their comments.

The Intra-Agency workgroup draft guidance document will be completed and available for comment in January 1999. At that time, EPA will publish a notice of availability and a 60–day opportunity to comment on the guidance document. A revised document will be ready no later than June 1999. The draft working level document (the SOP) is complete; it will be issued with the Intra-Agency document in February 1999, for comment and will be revised in light of public comment by July 1999.

B. Science Policy 2: Dietary Exposure Assessment - Whether and How to Use ''Monte Carlo'' Analyses

EPA assesses dietary exposure to pesticides in raw and processed foods using two distinct pieces of information: the amount of pesticide residue that is present in and on food (i.e., the residue level) and the types and amounts of food that we eat (i.e., food consumption). The residue information comes from the numerous crop field trials and other sources (such as monitoring data) where the amount of pesticide residue on a given commodity is measured. Routinely, consumption information comes from USDA surveys of what people eat. In the past, EPA has used the Dietary Risk Evaluation System (DRES) which is a deterministic model to combine the residue and food consumption information with data on a pesticide's toxicity to calculate acute and chronic dietary risk. This deterministic model calculates a single value (sometimes referred to as a point estimate) for all the residues for a given commodity.

Over the last few years, a different technique has been applied to estimating acute dietary exposure—a probabilistic evaluation called Monte Carlo analysis. A probabilistic analysis uses the entire range of data from the numerous crop field trial studies, or other sources to estimate the distribution of exposure to the residues for the population of concern. This technique allows for a more realistic estimate of exposure.

There are three issues associated with the use of probabilistic techniques:

1. Probabilistic analyses often exhibit a level of uncertainty at the extremes of the distribution. This uncertainty makes it difficult to judge if the results reflect an accurate estimate of risk, or an overestimate or underestimate risk.

2. EPA needs to make decisions that are appropriately protective of larger numbers of people, especially children, necessitating estimates of ''high end'' exposures (e.g., 99.9th percentile).

3. There is a concern over statistical treatment of data that are inputted into the Monte Carlo model. For example, how USDA's high end consumption estimates combine with the use of a 99.9th percentile output needs to be resolved.

The following steps have been taken or are being taken to address these issues:

1. In March 1998, the Agency presented to the SAP for comment draft

guidance for submission of probabilistic exposure assessments.

2. USDA and EPA are jointly assessing how best to treat data representing the extremes of exposure.

3. The issue of the appropriateness of using the 99.9th percentile was presented to the SAP. SAP comments are being considered.

4. EPA is drafting a policy paper on use of the 99.9th percentile in decision-making.

5. The Agency is working on statistical methods for effectively using composite data to estimate exposure from single-serving-sized food items.

These products will result:

1. SAP comments will be considered when preparing the next iteration of the draft document entitled ''Guidance for Submission of Probabilistic Exposure Assessments to the Office of Pesticide Programs' Health Effects Division.'' The document will be issued in October 1998 for a 60–day comment period. Revised guidance will be issued no later than March 1999.

2. In addition, USDA is reviewing its existing (1989–1991) food consumption data to ensure accuracy. This process will be completed in October 1998.

3. The policy paper exploring probabilistic techniques and the 99.9th percentile (draft working title ''Monte Carlo Techniques and the 99.9th Percentile'') will be issued for a 60–day comment period in December 1998. A revised document will be available no later than May 1999.

4. Finally, the draft paper on statistical methods on using composite data to estimate exposure from single serving food items (draft working title ''Use of the Pesticide Data Program in Acute Dietary Assessment'') will be issued for a 60–day public comment period in April 1999. The Agency will issue a revised document no later than September 1999.

C. Science Policy 3: Exposure Assessment - Interpreting ''No Residues Detected''

Pesticide manufacturers (i.e., registrants) seeking to have a tolerance established are required to submit data on the level of pesticide residues that remain in or on food. Often, instrumentation in the laboratory is not able to detect any residue below a specified level, which is called the ''limit of detection'' or LOD. However, even though the laboratory instrumentation cannot detect a residue, a residue may be present, at some level below the LOD, which may still present a potential concern to human health. Current EPA policy is to assume that non-detectable residues remain on treated commodities at ½ LOD.

How the Agency should interpret non-detects and how they should be incorporated into risk assessments presents these issues:

1. The Agency's method for incorporating non-detectable residues into its risk assessment (½ LOD) may either overestimate or underestimate risk depending on the actual distribution of data below the LOD.

2. There are potential trade and public health impacts if the Agency cancels a use, and subsequently revokes the corresponding tolerance in the U.S., based upon apparent unacceptable risks attributable in significant part to non-detectable residues, while other countries allow that use. If risks were accurately assessed or were underestimated, crops posing unacceptable risks may be imported into the U.S. because residues cannot be detected. If risks were overestimated, U.S. pesticide users may unnecessarily lose tools available to foreign growers.

EPA, FDA, and USDA are working together to develop and validate improved analytic chemistry methods for detecting residues of organophosphate pesticides. These improved methods are expected to be adapted to routine surveillance monitoring programs and to provide greater sensitivity than currently used methods. The use of more sensitive analytical methods should lessen the chance that imported food commodities may be treated with pesticides whose use is not allowed in the United States. In short, new, more sensitive methods should help to establish a ''level playing field'' for domestic growers and better protect U.S. consumers.

FQPA requirements to combine exposures from all sources (e.g., food, drinking water, and residential exposure) and from all chemicals with a common mechanism of toxicity magnify this problem. The resulting risk estimates may be significant even when a substantial portion of residues are below the level of detection.

The Agency has two initiatives underway to address the above issues:

1. An EPA workgroup is examining approaches that could allow EPA to determine that there is ''no reasonable expectation of finite residues.'' With sufficient data and clearer guidelines, uses for which food residues are truly insignificant could be demonstrated to have practically no dietary risk associated with them. This change would allow the Agency to focus its resources on evaluating exposures to pesticides at levels below the LOD, for which there is potential risk of concern. This change would also improve international harmonization. A paper entitled ''Threshold of Regulation'' will be issued in November 1998 for a 60–day comment period and will be revised in light of public comment no later than April 1999.

2. An OPP group is examining the availability of better statistical methods for assessing data sets that contain both detectable and nondetectable residues. Two papers will be issued as a result of this effort and will describe EPA's approaches to lessen the likelihood that the Agency's assessments either overestimate or underestimate food-borne exposure. The first paper (draft working title ''Use of Censored Data in Risk Assessments'') describes how to use statistical methods for situations where some of the residues are undetectable. The second paper (draft working title ''ChemSAC decision regarding use of LOD vs. LOQ (Limit of Quantitation) in dietary exposure assessments'') describes the use of limit of detection versus limit of quantitation in dietary exposure assessment. Both of these papers will be released for a 60–day public comment period in November 1998, with revised guidance to be issued no later than April 1999.

D. Science Policy 4: Dietary (Food) Exposure Estimates

In assessing dietary exposure from pesticide residues in food, EPA starts out with the ''worst-case'' residue level, which is the tolerance. Tolerances are regulatory levels and are set to accommodate the highest residue level that may be found in crops at the farm gate. Crop field trials are used to determine the highest residue level that can result from maximum legal use of a pesticide. As discussed below, actual residues on food are much lower, and may be virtually non-existent. Assuming that residues are present at tolerance level and that 100% of the crop is treated allows rapid cost-effective decision-making in many cases where risks are low. In these cases, there may be no need for registrants to collect additional data or for the Agency to use resources to review additional data.

Food exposure assessments can be improved with information on actual pesticide use, agricultural practices, processing practices, and actual or anticipated residues. This type of information includes data on pre-harvest intervals, actual application rates, application frequency, percent of the crop that is treated, pesticide degradation between harvest and the time the crop reaches the consumer (degradation over time), cooking and commercial processing studies, and

other related information, such as more comprehensive monitoring data for food and water. To estimate anticipated residue levels, the Agency may also need certain supporting residue data, such as residue decline studies, or procedures to translate or model residue data for typical use practices.

USDA provides the Agency with extensive information on pesticide use, food consumption data, and pesticide residues. The USDA information and information from other sources are key to the preparation of more realistic exposure assessments which then lead to more realistic acute and chronic dietary risk assessments. USDA and EPA work to ensure that the needed information is identified, collected, and used appropriately in the risk assessment. USDA and EPA have and will continue to obtain use information from growers which is then reviewed by the Agency and the registrants. EPA then identifies data gaps or the need for supplemental information.

The Agency has been working to complete the National Pesticide Residue Database (NPRD), a comprehensive database that will contain information about actual pesticide residues in raw and processed foods. A complete version of the NPRD is expected in November 1998, and will be available on EPA's web page. EPA will provide a description on the history, development, and use of NPRD; this will be available in December 1998.

There are several issues associated with the need for data to estimate food exposure more realistically:

1. Dietary risk estimates may be unrealistically high when typical use practices have not been factored in.

2. Information on actual pesticide use may be available, but residue levels resulting from such use cannot be calculated without certain residue testing, modeling efforts, or bridging data to meld the guideline studies with actual usage information.

3. Monitoring data are not available for all commodities, resulting in use of significantly different data in risk assessments for different chemicals and/or foods, and high risk estimates for those pesticides and crops that lack monitoring data.

To address the issues discussed above, the following products are forthcoming:

1. EPA will issue for comment in December 1998 a draft overview document (draft working title ''Framework for Dietary (Food) Exposure Assessment'') that describes how OPP does acute and chronic food exposure assessments and, more importantly, where in the existing guidance one can find methods for doing such exposure assessments; it will also provide guidance for growers, states, and others when collecting use information to explain the need for certain residue information (a revised document will be issued no later than April 1999).

2. EPA will complete matrices describing organophosphate use and usage on individual crops by December 1998. These matrices present real-world information on pesticide usage and the pests which drive the usage, and are developed with support from USDA and the grower community.

High quality consumption data are also critical to developing more accurate risk assessments. EPA recently acquired the capability to perform acute dietary risk assessments using state-of-the-art software and the most recently available USDA food consumption data (1989–91). In addition, USDA, in cooperation with EPA, is translating the most recently conducted food consumption survey information (1994–96) into a data format that can be used in EPA's risk assessments (i.e., from foods as eaten to the raw agricultural commodities which make up those foods). A peer review of the assumptions or ''recipes'' used in the translation of this consumption data will be held in April 1999. The final translation should be completed and available to EPA no later than June 1999. In addition, USDA is currently completing collection of supplementary food consumption data for children under the age of nine years to improve the precision of the dietary risk estimates. These data are being collected in such a manner that they will be combinable with the 1994–96 data. The translated form of the supplemental children's survey should be available to EPA no later than December 1999.

E. Science Policy 5: Dietary (Drinking Water) Exposure Estimates

For tolerance decisions under FQPA, EPA must now aggregate exposures to a pesticide from both dietary sources (food and drinking water) and all non-occupational sources for which there is reliable information. There are two complementary methods for estimating concentrations of pesticides in drinking water. The first is to measure pesticide residues in drinking water by taking samples of drinking water in use areas at appropriate times, especially during the use season for surface water supplies. The second is to develop and use mathematical models to predict pesticide levels in drinking water.

The Pesticide Program's currently available model-based approaches for predicting potential drinking water exposure are based on screening models that predict pesticide levels in vulnerable groundwater and surface water. These predictions are generally believed to overestimate the concentration of pesticides in most drinking water sources, and hence, in some cases drinking water exposure may appear to present an unacceptable dietary risk even though actual risks to most people may in fact be lower.

Several efforts are underway to address the problem that current screening models, particularly surface water screening models, do not well represent drinking water systems and may significantly overestimate residue levels in most drinking water sources. First, OPP developed and presented to the FIFRA SAP in July 1998 a proposed ''reservoir scenario'' model as a replacement for the ''small field pond'' model that is currently used to produce screening level estimates of pesticide concentrations in drinking water derived from surface water. By replacing the ''small field pond'' model with an actual reservoir, EPA expects that its screening level drinking water estimates for surface water will be more accurate. Subsequent to the SAP presentation, OPP developed a list of about 20 possible reservoirs that it may further evaluate for use as an index reservoir in its screening level assessments. This list is currently available in the public docket for this notice.

Second, OPP is working to develop the necessary data bases and Geographical Information System-based tools to enable it to consider the percentage of the area around a reservoir that is cropped and, thus, potentially treated with a pesticide when it uses its model to predict pesticide levels in a drinking water reservoir. Currently, OPP assumes that the entire area surrounding a body of water is planted with the crop and treated; this generally results in an overestimate of the amount of pesticide leaving the field and running off into surface water, and, therefore, an overestimate of pesticide concentrations in surface water used as drinking water.

Third, OPP completed and presented to the FIFRA SAP in July 1998, its preliminary evaluation of watershed-scale surface water models. Further efforts are ongoing to conduct preliminary model validation of the basin-scale models for the White River watershed in Indiana. This model validation effort is expected to provide some preliminary understanding of the relative accuracy of each of these models. OPP expects that these basin-scale models will ultimately be used to produce more refined estimates of

pesticide concentrations in drinking water for those cases where an unreasonable risk is estimated by the use of a screening level estimate.

In addition to the efforts described above, EPA has entered into a cooperative agreement with the International Life Sciences Institute (ILSI) to advance probabilistic drinking water exposure assessment methodology. ILSI is working to independently develop long-term recommendations for model development and data collection so that estimates of pesticide concentrations in drinking water can be used in probabilistic aggregate exposure analyses in the future. In September 1998, ILSI convened a panel of over a dozen scientists to consider such issues as: (1) What drinking water related data are necessary to use in probabilistic aggregate risk analyses and how can these data be collected; and (2) what role modeling can play in generating information/estimates on pesticide concentration distributions in drinking water sources. Recommendations from the September 1998 meeting will then be used in a follow-up meeting in December 1998, to develop detailed recommendations on how to collect information that can be used in probabilistic aggregate exposure analysis. ILSI expects to finalize its recommendations in early 1999.

Finally, OPP continues efforts to gather and interpret available drinking water monitoring data and to obtain additional monitoring of pesticides in drinking water as individual registration and reregistration decisions are made. Further, OPP is working with Federal government-sponsored water monitoring programs such as the United States Geological Survey's National Ambient Water Quality Assessment Program to ensure that key pesticides and drinking water source waters are covered; OPP is coordinating pesticide monitoring needs with EPA's Office of Water and the states as well.

EPA is currently using interim policy and interim operating procedures to factor drinking water exposure into tolerance decision-making. EPA will continue to update its interim policy and interim operating procedures as important new information becomes available.

Over the next 12 months, OPP expects to see three products completed. First, the Agency will address the July 1998 SAP comments on replacing the ''small field pond'' scenario with the reservoir scenario and revise its operating policy to include the reservoir scenario in screening level assessments. In its revision to its operating policy, OPP expects also to propose a change in the Drinking Water Level of Concern (DWLOC) terminology. This revised policy will be made available for a 60–day comment period in December 1998, and will be revised in light of public comment no later than May 1999. EPA expects to solicit comment on the concept of replacing the ''small field pond'' scenario with a specific type and size of reservoir, as well as on the timing for implementation.

Second, the Agency will complete development of an approach to factoring the percentage of land surrounding a reservoir that is ''cropped'' into its screening level assessments and revise its operating policy to include this approach. The Agency plans to present to the SAP in February 1999, a specific methodology for developing cropped area factors, proposed cropped area factors for 5-10 major crops and 5-10 minor crops, and examples of how cropped area factors would be applied in screening level drinking water assessments. EPA expects to resolve any issues raised by the SAP and expects to make this revised policy available for a 60–day public comment period by May 1999. After consideration of public comments, a revised policy issue paper will be issued no later than October 1999.

Third, the current HED SOP for factoring drinking water exposure into dietary risk assessments will be updated in June 1999, to include the reservoir scenario and will be published for a 60–day comment period. EPA expects that the new SOP which incorporates the reservoir scenario will be completed no later than November 1999. A revised SOP that includes the percent cropped area treated will be made available in December 1999, for comment and will be revised in light of public comment no later than May 2000. The SOP will be periodically updated thereafter as needed.

F. Science Policy 6: Assessing Residential Exposure

EPA must now include residential and other non-occupational exposures in the aggregate exposure assessments for pesticides. Generally speaking, residential exposure monitoring data have not been routinely required. Thus, EPA has been relying on existing monitoring, survey, and modeling data, including information on activity patterns, particularly for children, to estimate residential exposure to pesticides.

Because highly specific residential exposure data are generally lacking and there is not wide understanding and acceptance of existing models and assumptions, several workgroups and task forces are working to generate data and improve methods for conducting residential exposure assessments. Proposed Agency SOPs, which provide standard methods for developing residential exposure assessments when data are limited, were drafted and taken to the SAP for comment in November 1997. They are being revised based on the SAP comments and new information from the published literature and other sources.

Additionally, the Indoor Residential Exposure Joint Venture, an industry/Agency task force, is developing information on indoor pesticide treatments and pet uses. In Phase I, the Joint Venture will provide information to better characterize pesticide use patterns and practices. In Phase II, it will apply these data to exposure assessments, including, for example, looking at transferable residue data from treated surfaces. The Task Force is generating these data to support a consortium of registrant products; that is, these chemical-specific data will be used in conjunction with or in lieu of the SOPs (where deemed appropriate). Also, the Outdoor Residential Exposure Task Force, another industry/Agency taskforce, is in the midst of generating lawn and turf data to assess pesticide exposure from mixing, loading, and applying pesticides, as well as exposure to people who enter a recently treated turf area.

The Agency plans to incorporate the 1997 SAP comments on the SOPs by December 1998. The revised SOPs will then be published with a 60–day comment period. Revised documents will be completed no later than May 1999. On the same schedule, EPA plans to draft an overview document (draft working title ''Framework for Residential/Public Area Exposure Assessment'') on how it proposes to develop and use exposure estimates for pesticides applied around residences and public areas. In addition, the Indoor Residential Joint Venture Task Force is expected to have a Phase 1 draft document available in March 1999; Phase 2 will be completed by October 2000. Preliminary results from the Outdoor Residential Exposure Task Force are expected in August 1999. The Agency will review these chemical-specific data and information developed by the Task Forces and use this information in conjunction with or in place of the current SOPs, as appropriate.

G. Science Policy 7: Aggregating Exposures from all Non-Occupational Sources

As noted in sections E. and F. of this unit, under the requirements of FQPA, in setting tolerances EPA must now aggregate exposures from all sources where there is available information. Methods for aggregating exposures are being developed.

The current method for aggregating exposures using simple addition provides only point estimates. Methods that more clearly demonstrate the range of risks across the general population and population subgroups would better characterize risk for risk management decisions regarding pesticide use. These methods generally use probabilistic analyses.

In addition to Agency efforts to address these issues, the scientific community is examining comprehensive aggregate exposure assessment approaches. In February 1998, ILSI conducted a public workshop where three groups of experts presented their proposed approaches. Workshop participants evaluated and commented on the approaches.

ILSI will issue an independent scientific assessment of the technical issues surrounding aggregation of distributions. This report is scheduled to be completed in November 1998. After evaluation of this report, along with other comments by the scientific community, the Agency will develop a draft guidance document in April 1999 for a 60–day comment period. A revised version in light of public comment should be available no later than September 1999. In addition, EPA is developing a Standard Operating Procedure paper which will follow the same time line.

H. Science Policy 8: How to Conduct a Cumulative Risk Assessment for Organophosphate Insecticides or Other Pesticides With a Common Mechanism of Toxicity

Under FQPA, EPA is required to consider available information on the effects of cumulative exposure to the pesticide and other substances with common mechanisms of toxicity. EPA believes that the organophosphate insecticides, the first group examined for tolerance reassessment, should be considered to operate via at least one common mechanism of toxicity-cholinesterase inhibition, unless and until the Agency receives data demonstrating otherwise.

In the **Federal Register** of August 6, 1998 (63 FR 42031) (FRL–5797–9), EPA issued a notice announcing the availability of the proposed EPA pesticide policy guidance document entitled ''Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity for Use in Assessing the Cumulative Toxic Effects of Pesticides.'' The guidance document describes the approach that EPA proposes to use for identifying and categorizing pesticide chemicals that have common mechanisms of toxicity for purposes of assessing the cumulative toxic effects of such pesticides. There is a 60-day comment period for this document that ends in October 1998. Revised guidance will be issued no later than January 1999. In developing this document, the Agency solicited advice from the SAP in February 1997; a year later (March 1998), OPP reported its progress to the SAP.

Since there are currently no standard methods for doing cumulative risk assessment, EPA is pursuing an open, peer-reviewed process to develop approaches to cumulative risk assessment. The Agency is also nearing completion of the revision of the Chemical Mixtures Risk Assessment Guidelines, which present methods for combining risks from multiple chemicals. In addition, ILSI is independently exploring appropriate methods and developing a framework for performing a cumulative risk assessment. ILSI held a workgroup on this subject in September 1998, and a report is expected in early 1999. The Agency will continue its ongoing efforts in this area along with examining the ILSI work and other sources of information in preparation for release of an Agency draft guidance document by June 1999 with a 60–day comment period. The guidance will be revised no later than November 1999.

I. Science Policy 9: Selection of Appropriate Toxicity Endpoints for Risk Assessments of Organophosphates

Most organophosphate (OP) and certain carbamate insecticides exert their principal toxic effects on insects, mammals, and other animals by the mechanism of cholinesterase inhibition, which may lead to neurotoxicity. Measurement of cholinesterase levels in the blood or nervous system after exposure to OPs has become the most common endpoint used in risk assessments of this chemical class.

Over the last several years, the Agency has engaged outside scientists and the regulatory community about how measures of cholinesterase inhibition should be used in risk assessments. EPA has also discussed more generally how these data should be viewed along with other types of data in risk assessments. Two issues focused on were: (1) The role of blood measures in risk assessment since plasma and red cell cholinesterases are not part of the nervous system but they may be an indirect measure of what is occurring in the central and peripheral nervous systems; and (2) whether plasma cholinesterase should be treated differently from red blood cell cholinesterase.

In June 1997, OPP made a comprehensive presentation to the SAP on cholinesterase inhibition. The presentation included a literature review, a series of case studies, a summary of activities related to methods of cholinesterase measurement, and a proposed policy to use a weight-of-evidence approach considering all of the data that might result in the use of cholinesterase measures in plasma, red blood cells, or brain for defining critical effects and no-effects levels. In addition, EPA also asked the SAP about the feasibility of using measures of peripheral nervous system tissue to replace blood measures, which largely serve as indirect estimators of cholinesterase inhibition in the peripheral nervous system in animals. The positions contained in the paper presented to the SAP, entitled ''Office of Pesticide Programs Science Policy on the Use of Cholinesterase Inhibition for Risk Assessments of Organophosphate and Carbamate Pesticides,'' draft April 30, 1997, will be issued for a 60–day comment period in October 1998. The SAP comments on that document will be provided in the docket with that **Federal Register** notice. Revised guidance will be issued no later than March 1999.

III. How EPA Will Address Comments

A. Comments Already Received

Before and during the TRAC meetings, the Agency received comments on how to approach and improve its interim policies. Specifically, EPA received several petitions, including those from the National Food Processors Association, the Natural Resources Defense Council (NRDC) and others, a report from the Implementation Working Group (IWG), letters from the Environmental Working Group, and various correspondence from Congress and others. These documents will be considered as the Agency refines its science policies, and will also be made available through the public docket. Additionally, the U.S. House Agriculture Committee has held a hearing on FQPA implementation and there have been legislative or public hearings in California, Idaho, and

Michigan as well at which comments were solicited and offered.

B. NRDC Petition

On April 23, 1998, the NRDC and various individuals and other public interest organizations filed a petition requesting that EPA issue an interpretive rule/policy statement regarding EPA's implementation of the FQPA provision concerning the additional 10-fold factor to protect infants and children. The petition seeks three specific actions:

1. Issuance of a policy statement/interpretive rule providing that EPA ''maintain the ten-fold safety factor unless the Administrator has determined that there are reliable data on [evolving] pre- and post-natal toxicity and exposure for fetuses, infants, and children.'' The petition sets forth a minimum set of data that petitioners believe constitutes ''reliable data'' and requests that the statement/rule direct EPA to apply the additional 10-fold factor if any of these data are absent.

2. Convene a ''blue ribbon panel'' to assist EPA ''in determining when there are 'reliable' data for pre- and post-natal toxicity to fetuses, infants, and children.'' NRDC recommends that this panel be convened under the auspices of the Children's Health Protection Advisory Committee.

3. Issuance of a policy statement/interpretive rule providing that, pending completion of the panel's report, EPA will apply the 10-fold FQPA factor.

C. Grower Group and Trade Association Petition

On May 26, 1998, EPA received a Petition on Rulemaking Under the Food Quality Protection Act submitted on behalf of several grower groups and trade associations. The petition requested EPA to use notice and comment rulemaking to establish policies and procedures for implementing FQPA. The petitioners claim that rules are needed to establish policies and procedures for assessing aggregate exposures, common mechanism of toxicity, and cumulative effects, and for determining when the FQPA 10-fold factor may be reduced or removed. The petitioners state that EPA is using its current science policies as though they were binding requirements. The petitioners maintain that neither the advisory panel process nor the notice and comment rulemaking on individual tolerances appropriately substitute for notice and comment rulemaking on major procedural or policy issues.

D. IWG Report

The IWG, a coalition of farm, food, manufacturing, and pest management organizations, issued a ''road map'' report on June 18, 1998, which ''presents the IWG's views on how EPA can ensure a more balanced and workable implementation of FQPA.'' The sections of the report include the IWG's general recommendations, their interpretation of Congress's intent, EPA actions to date, ''an approach to aggregate risk assessment and the assessment of cumulative effects of chemicals with a common mechanism of toxicity,'' other recommendations, and issue papers.

IV. EPA's Interim Approach While Assessing the Nine Science Policies

A. Interim Approach

While refining its approach to the nine issues, EPA will use the policies described in its interim science policy documents when making decisions on actions such as establishing tolerances for registrations under section 3 of FIFRA, emergency exemptions under section 18 of FIFRA, and tolerance reassessments.

B. EPA's Approach to Notice and Comment

The Agency intends to refine each of the nine science policy issues by seeking public input through the notice and comment process explained in this notice. In announcing the availability of the nine science policy documents for comment, the Agency will:

1. Identify any significant comments EPA has already received on the various policy documents.

2. Where appropriate, ask specific questions based on pivotal issues in those comments.

3. Provide a comment period through the **Federal Register** notice on each science policy issue, as described in this notice, after which the Agency will respond to significant comments received in response to the Agency's notices, and revise each policy as appropriate.

C. Documents Available in the Docket

The following documents prepared for the TRAC are available in the docket: A table entitled ''Framework for Refining FQPA Science Policy'' and a timeline entitled ''Schedule for Release of Guidance on Science Policy Issues.'' In addition, a compendium of the Agency's current operating guidelines is available in the docket; however, comment is not being requested at this time on these documents since they are being revised. Opportunity for comment will be offered as noted earlier in this notice.

V. Policies Not Rules

The numerous science policy documents discussed in this notice are intended to provide guidance to EPA personnel and decision-makers, and to the public. As guidance documents and not rules, these policies are not binding on either EPA or any outside parties. Although these guidance documents provide a starting point for EPA risk assessments, EPA will depart from these policies where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a given policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a given policy should be abandoned.

Throughout this notice, EPA has stated that it will make available revised guidances after consideration of public comment. Public comment is not being solicited for the purpose of converting these policy documents into binding rules. EPA will not be codifying these policies in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of these guidances.

The ''revised'' guidances will not be unalterable documents. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on the individual guidance documents, EPA would welcome comments that specifically address how the guidance documents can be structured so that they provide meaningful guidance without imposing binding requirements.

VI. Closing

This is EPA's approach to providing for notice and comment regarding the nine science policy issues discussed above and on the timing of the process set out in the framework. Under this approach, for each science policy issue described above, a document which describes the Agency's approach for each issue will be published separately, as available, for public comment through the **Federal Register**.

VII. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPP–00557'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the 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. Comment 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–00557.'' Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, FQPA, Pesticides.

Dated: October 23, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–29013 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–6]

National Environmental Justice Advisory Council Workgroup on Waste Transfer Stations; Notice of Public Hearings

The Environmental Protection Agency (EPA) is sponsoring a fact finding meeting held by the National Environmental Justice Advisory Council (NEJAC) working group on Waste Transfer Stations (WTS) for the purpose of gathering information related to potential environmental issues related to Waste Transfer Stations. Information gathered from these meetings will be gathered in a report for recommendations to EPA.

The WTS working group was formed after a NEJAC resolution calling for EPA to ''examine the risks from the siting and operation of Waste Transfer Stations for the purpose of determining its regulatory responsibilities and prescribe requirements to reduce health risks associated with such facilities.'' The WTS working group consists of representatives of community based organizations, business interests, and elected officials from impacted communities for the purposes of advising on the design and implementation of the WTS study.

The workgroup plans to conduct two-fact finding meetings: the first one will take place in New York City on November 10, 1998; the second meeting will take place in Washington, D.C., meeting day and location to be announced. The New York meeting will take place at the Marriot Hotel in Brooklyn on November 10, 1998, 333 Adams Street, Brooklyn, NY 11021, (718) 246–7000.

Please call Kent Benjamin, Office of Solid Waste and Emergency Response at (202) 260–2822 for more information or Nancy Wilson at, 202–260–1910, if Kent is unavailable.

Dated: October 26, 1998.

Linda Garczynski

Director, Outreach Special Projects, Office of Solid Waste and Emergency Response.

[FR Doc. 98–29018 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–5]

Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of new policy and repeal of existing policy.

SUMMARY: EPA is today withdrawing its May 7, 1974 Statement of Policy for Voluntary Environmental Impact Statements (EIS) (39 FR 16186) and publishing a Statement of Policy for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents. The new Statement of Policy updates Agency policy to make it more consistent with current practice. This policy change widens the scope of Agency activities for which a NEPA document may be prepared voluntarily and enables EPA to address actions for which a voluntary EIS would have been prepared previously with a voluntary Environmental Assessment (EA) if appropriate. Additionally, EPA is withdrawing the Procedures for the Voluntary Preparation (39 FR 37419, October 21, 1974) and instead will use procedures as set out at 40 CFR Part 6, Subparts A through D, as specified below.

DATES: This policy shall take effect October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph Montgomery at (202) 564–7157; *Email: montgomery.joseph@epamail.epa.gov;* or Marguerite Duffy at (202) 564–7148; *E-mail:duffy.marguerite@epa.gov;* U.S. Environmental Protection Agency, Office of Federal Activities (2252–A), 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

In the November 28, 1997 **Federal Register** (62 FR 63334), EPA proposed changes in its Statement of Policy for Voluntary EISs, which it had adopted and published on May 7, 1974 in the **Federal Register** (39 FR 16186). This revised policy updates EPA's 1974 policy to reflect how Congress and the Courts have defined EPA's NEPA obligations and to ensure that EPA's voluntary practices regarding NEPA compliance are consistent with practices provided in the NEPA regulations issued by the Council on Environmental Quality (CEQ) at 40 CFR Parts 1500 through 1508. The revised policy also encourages expansion of the increased discretionary use of NEPA procedures voluntarily in circumstances where they can be particularly helpful for decision-making involving other federal agencies, cross-media issues, or other concerns such as environmental justice. The revised policy affects certain EPA standard-setting and cancellation procedures.

II. Response to Comments

A total of four comments were received in response to the November 28, 1997 proposed changes. Three organizations were supportive of the proposed changes. One state government concurred with the proposed changes but requested that EPA consult with states regarding any actions which were previously reviewed through the EIS process but which EPA believes should be evaluated through environmental assessments in the future. The state also requested that EPA continue to prepare EISs in the case of site designations under the Marine Protection, Research and Sanctuaries

Act. EPA appreciates the support for its proposed change to the policy. In response to the first request, EPA supports early consultation with the states, particularly on specific actions which affect one or more states, and expects that there will be early coordination with affected states on these actions. EPA does not believe that there is a need to formalize this process in the policy statement and notes that, in addition to early consultation between EPA and the states, under the EPA NEPA implementing regulations at 40 CFR Part 6, which EPA will follow in its voluntary NEPA compliance, a 30-day public review is required for any proposed Finding of No Significant Impact. This allows an additional opportunity for state involvement in the decision on preparing a voluntary EIS. As to the second point, EPA believes that decisions on preparing EISs for proposed ocean disposal sites should be made on a case-by-case basis. States have been working closely with EPA Regional offices on this program for many years; the Agency does not envision significant changes to the decision making process or working relationship. EPA voluntarily will follow NEPA procedures in ocean disposal site designations under MPRSA and these procedures provide for consultation with the states. Therefore, states will have an opportunity to comment on the need for an EIS as discussed above.

III. Statement of Policy

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) requires that federal agencies prepare detailed environmental impact statements (EISs) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Regulations promulgated in 1978 and amended in 1986 by CEQ at 40 CFR Parts 1500 through 1508 further provide for the preparation of Environmental Assessments (EAs) to provide sufficient evidence and analysis for determining whether to prepare an EIS or to prepare a Finding of No Significant Impact (FONSI). The objective of NEPA is to build into the agency decision-making process an appropriate and careful consideration of all environmental aspects of proposed actions.

The Environmental Protection Agency (EPA) is legally required to comply with the procedural requirements of NEPA for its research and development activities, facilities construction, wastewater treatment construction grants under Title II of the Clean Water Act (CWA), EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources, and for certain projects funded through EPA annual Appropriations Acts. Section 511(c)[1] of the CWA exempts other EPA actions under the CWA from the requirements of NEPA. Section 7(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)) exempts actions under the Clean Air Act from the requirements of NEPA. EPA is also exempted from the procedural requirements of environmental laws, including NEPA, for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response actions. Courts also consistently have recognized that EPA procedures or environmental reviews under enabling legislation are functionally equivalent to the NEPA process and thus exempt from the procedural requirements in NEPA.

Under the new policy, EPA may undertake voluntary preparation of EAs and EISs under programs where it is not legally required to prepare such documents, where such voluntary documents can be beneficial in addressing Agency actions. Voluntary NEPA documentation can be particularly useful in situations where other federal agencies are preparing NEPA documentation for related actions, where NEPA's well-understood and long-standing procedures provide an opportunity for increased public understanding and involvement, and where the NEPA process can facilitate analysis of environmental impacts. Accordingly, the Agency has determined that, while it is not legally bound to do so by NEPA, EPA may voluntarily prepare EAs and, as appropriate, EISs in connection with certain EPA actions. The voluntary preparation of these documents in no way legally subjects the Agency to NEPA's requirements.

A. Applicability

EPA will prepare an EA or, if appropriate, an EIS on a case-by-case basis in connection with Agency decisions where the Agency determines that such an analysis would be beneficial. Among the criteria that may be considered in making such a determination are: (a) the potential for improved coordination with other federal agencies taking related actions; (b) the potential for using an EA or EIS to comprehensively address large-scale ecological impacts, particularly cumulative effects; (c) the potential for using an EA or an EIS to facilitate analysis of environmental justice issues; (d) the potential for using an EA or EIS to expand public involvement and to address controversial issues; and (e) the potential of using an EA or EIS to address impacts on special resources or public health.

For standard setting under the CAA; the Noise Control Act; and the Atomic Energy Act; criteria for ocean disposal under the Marine Protection, Research and Sanctuaries Act (MPRSA); and pesticide disposal regulations and pesticide cancellations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); EPA will continue to fulfill its commitment to meeting the fundamental elements of NEPA through the Agency's Regulatory Development Process for rule-making, and through negotiated settlements with pesticide producers under FIFRA. The new policy will not preclude the voluntary preparation of an EA or EIS in an individual case should it be determined that an EA or EIS would be beneficial.

B. Procedures

With respect to voluntary EAs and EISs prepared pursuant to this policy, the Agency will follow, as appropriate, procedures set out at 40 CFR Part 6, Subparts A through D (which can be found on EPA's Web-Site at www.epa.gov/oeca/ofa). In specific cases where following these procedures in the preparation of voluntary EAs or EISs would not be practicable or appropriate, the Director, Office of Federal Activities, Office of Enforcement and Compliance Assurance, may approve exemptions. The public shall be notified of any exemptions.

IV. Repeal of Current Policy

Effective upon publication of this policy in the **Federal Register** the Statement of Policy for Voluntary EISs (39 FR 16186) and the Environmental Impact Statements Procedures for the Voluntary Preparation (39 FR 37419), are withdrawn and replaced by this policy.

[1] In its May 7, 1974 Statement of Policy, EPA construed CWA § 511(c) as authorizing that ''environmental impact statements be prepared only'' in connection with the activities to which that section's exemptions did not apply. After the Policy's adoption, in language virtually identical to that in § 511(c), Congress enacted an exemption for EPA Clean Air Act activities (15 U.S.C. § 793(c)(1)). EPA did not construe the Clean Air Act exemption as precluding voluntary preparation of NEPA documents, and has, in fact, also prepared voluntary NEPA documents for activities exempted under CWA § 511(c). This policy does not preclude voluntary preparation of EAs or EISs for any EPA programs, including Clean Water Act Programs.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: October 23, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–29019 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6179–1]

Final Guidelines for Implementation of the Drinking Water Infrastructure Grants Tribal Set-Aside Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final guidelines.

SUMMARY: The Environmental Protection Agency (EPA) has released Final Guidelines for the Drinking Water Infrastructure Grants Tribal Set-Aside (DWIG TSA) program (EPA 816–R–98–020). The Tribal Set-Aside Program was established as a result of the reauthorized Safe Drinking Water Act (SDWA), signed by President Clinton on August 6, 1996. Section 1452 of the SDWA authorizes a Drinking Water State Revolving Loan Fund (DWSRF) similar to a fund for wastewater treatment systems that has been in place under the Clean Water Act for several years. The SDWA also authorizes EPA to set aside up to 1½ percent of the amounts annually appropriated to carry out section 1452 for grants to Indian Tribes and Alaska Native Villages. The SDWA directs EPA to use these funds for infrastructure improvements to public drinking water systems that serve Indian Tribes.

EPA first received federal funds for section 1452 in its FY1997 Appropriation Bill. EPA received $1.275 billion in FY1997, and $725 million in FY1998 for the programs authorized by section 1452. Of these amounts, 1½ percent (the maximum allowed by law) has been set aside for the Tribal program—$19,125,000 in fiscal year 1997 and $10,875,000 in fiscal year 1998.

These funds and each future year's Tribal Set-Aside Program funds will be allotted, by formula (which is described in the Final Guidelines), among the nine EPA Regional offices with Tribal programs. In consultation with the Indian Health Service (IHS) and the Tribes in their Region, each EPA Region will identify potential projects, prioritize those projects, and select the ones to receive funding from its share of the Set-Aside Program allotment. The EPA Regions will then award and administer the funds. Each Regional office will give the Tribes in their Region an opportunity to review and comment on the Regional program as they develop it, and once developed, will consult with the IHS and the Tribes in their Region regarding annual project selections.

The Final Guidelines explain how the Tribal Set-Aside Program will be implemented; outline who is eligible to receive funds from the program; and list the types of projects that are eligible and ineligible to be funded with DWIG TSA monies. Within the conditions and allowances described in the Final Guidelines, the EPA Regions will have flexibility in designing a program that works best for the Tribes in their Region.

Copies of the Final Guidelines have been sent to every Indian Tribe currently recognized and eligible for funding and services from the Bureau of Indian Affairs.

DATES: The Guidelines become effective on October 29, 1998.

ADDRESSES: Copies of the Final Guidelines are available through the Safe Drinking Water Act Hotline, telephone (800) 426–4791, and from the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street, SW, Washington, DC 20460. A single copy of the document can be picked up at the Resource Center in Room 2615 of the Waterside Mall at the address above. The Center is open from 8:30 a.m. until 5 p.m. Monday through Friday. The Guidelines may also be obtained from the EPA Web Site at the URL address ''http://www.epa.gov/safewater/tribes.html''.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. For technical inquiries, contact Ray Enyeart, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water, U.S. EPA, (4606), 401 M Street SW, Washington, DC 20460, telephone (202) 260–5551.

Authority: Pub. L. 104–182.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–28362 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–7]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the California Department of Transportation and the Granite Construction Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the California Department of Transportation and the Granite Construction Company (together the ''Respondents'').

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (the ''Act''). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 309(g) of the Act, 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings under section 309(g) are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits'' (''Part 22''), 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in Part 22. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after publication of this notice.

On September 30, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Complaint:

In the Matter of the State of California, Department of Transportation, District 7 and the Granite Construction Company, Watsonville, California, Docket No. CWA–309–IX–FY98–23.

The Complaint proposes a penalty of Fifty-five Thousand Dollars ($55,000) for violations of NPDES Permit No. CAS000002 and Section 301(a) of the Act, 33 U.S.C. 1311(a), at the ''Route 126 Widening Project'' in Los Angeles County, California. EPA and the Respondents have agreed to a proposed Consent Agreement in which the Respondents shall pay the civil penalty of $55,000.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the California Department of Transportation and the Granite Construction Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: October 7, 1998.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 98–29016 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6181–8]

Clean Water Act Class I: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the California Department of Transportation and FCI Constructors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the California Department of Transportation and FCI Constructors, San Diego, California (together the ''Respondents'').

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act (the ''Act'') and also providing notice of opportunity to comment on the proposed penalty.

Under 309(g) of the Act, 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a). Class I proceedings under section 309(g) are conducted in accordance with Subpart I of the proposed ''Consolidated Rules of Practice Governing The Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,''(''proposed Part 22''), which has been published in the **Federal Register** at 63 FR 9480 (February 25, 1998).

On October 5, 1998, EPA commenced the following Class I proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Complaint:

In the Matter of the State of California, Department of Transportation, District 12 and the FCI Constructors, San Diego, California, Docket No. CWA–09–1999–001.

The Complaint proposes a penalty of Fifty-five Thousand Dollars ($55,000) for violations of NPDES Permit No. CA8000279 and Section 301(a) of the Act, 33 U.S.C. 1311(a), at the ''Interstate 5 Widening Project'' in Orange County, California. EPA and the Respondents have agreed to a proposed Consent Agreement in which the Respondents and shall pay the civil penalty of $11,145.

The procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in proposed Part 22. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of this public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the Respondents in the proceeding fail to file a response within the time period specified in proposed Part 22.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of proposed Part 22, review the complaint or other documents filed in these proceedings, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in these proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this notice.

Dated: October 7, 1998.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 98–29017 Filed 10–28–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 22, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. 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. Comments are requested concerning (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 estimate; (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.

DATES: Persons wishing to comment on this information collection should submit comments December 28, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0170.

Title: Section 73.1030, Notifications Concerning Interference to Radio Astronomy, Research, and Receiving Installations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 30.

Estimated Time per Respondent: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 29 hours.

Estimated Cost to Respondents: $8,550.

Needs and Uses: Section 73.1030 requires licensees to provide simultaneous written notification to the Interference Office at Green Bank, West Virginia, when an application is filed with the FCC proposing to operate a short-term broadcast auxiliary station; or an applicant seeks authority to construct a new broadcast station; or authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the geographical coordinates of the National Radio Astronomy Observatory site in Green Bank, West Virginia; or the Naval Radio Research Observatory site at Sugar Grove, West Virginia. The data are used by the Interference Office to enable them to file comments or objections with the FCC in response to the notification in order to minimize potential harmful interference to the observatories.

On September 26, 1997, the Commission adopted a Report and Order in ET Docket No. 96–2 which established a coordination zone that covers the islands of Puerto Rico, Desecho, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone requires applicants for new and modified radio facilities in various communications services within the coordination zone to provide notification of the technical parameters of proposed operations to the Arecibo Radio Astronomy Observatory at the time their applications are submitted to the Commission. The notification to the Arecibo Radio Astronomy Observatory in Puerto Rico will enable the Observatory to receive information needed to assess whether an application's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of problems through coordination between applicants and the Observatory.

OMB Control Number: 3060–0194.

Title: Section 74.21, Broadcasting Emergency Information.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1 hour.

Estimated Cost to Respondents: 1 hour.

Needs and Uses: In the event of an emergency, Section 74.21 requires that a licensee of an auxiliary broadcast station notify the FCC in Washington, DC, as soon as practicable, when that station is operated in a manner other than that for which is authorized. This notification shall specify the nature of the emergency and the use to which the station is being put. The licensee shall also notify the FCC when the emergency operation has been terminated. These notifications are used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28919 Filed 10–28–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 22, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. 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. Comments are requested concerning: (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 estimate; (c) ways to enhance the quality, utility, 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 information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 30, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0541.

Title: Transmittal Sheet for Phase II. Cellular Applications for Unserved Areas.

Form Number: FCC Form 464-A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 600.

Estimated Time Per Response: 10 minutes (0.166 hours).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 100 hours.

Cost to Respondents: None.

Needs and Uses: The information collected will be used by the Commission to determine whether the applicant is qualified legally, technically, and financially to be licensed as a cellular operator. Without such information, the Commission could not determine whether to issue licenses to the applicants that provide telecommunication services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The transmittal sheet, filed in

conjunction with FCC Form 600, facilitates application intake and other processing functions. The applicant must certify on the form that the application is complete in every respect and contains all the information required by the Commission's cellular rules. The data collected are required by the Communications Act of 1934, as amended and Commission Rules 22.105.

The form has been revised to delete the payment information previously required. Any payment to the FCC now requires the filing of a Fee Remittance Advice, FCC Form 159, which duplicates this information. Additionally, we have re-evaluated the number of receipts which reflects a significant decrease from 10,000 to 600 respondents. This is attributed to the majority of the cellular market being filled and applications being filed relate to maintenance of those licenses. The burden per respondent remains at 10 minutes, making the total annual burden an estimated 100 hours.

OMB Approval Number: 3060–0054.

Title: Application for Exemption from Ship Station Requirements.

Form Number: FCC 820.

Type of Review: Revision to a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households.

Number of Respondents: 200.

Estimated Time Per Response: 1 hour and 10 mins. (1.166 hours).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 233 hours.

Estimated Cost to Respondents: $27,000 ($135.00 filing fee/submission).

Needs and Uses: FCC Rules require this collection of information when exemptions from radio provisions of statute, treaty or international agreement are requested. The data are used by examiners to determine the applicants qualifications for the requested exemption.

The data collected are required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR 1.922, 80.19 and 80.59.

This form is being revised to delete the payment information previously required. Any payment to the FCC must be accompanied by a Fee Remittance Advice, FCC Form 159, which duplicates this information. We have added a space for the applicant to provide an E-Mail address where the Commission can send E-Mail regarding the application. Instructions have been updated to reflect current mailing address and phone information for the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28990 Filed 10–28–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

FCC Office of the Secretary Relocates To The Portals; Procedure for Paper Filings

October 23, 1998.

Effective November 2, 1998, the Office of the Secretary will relocate to the Commission's new building facilities at The Portals, 445 Twelfth Street, S.W., Washington, D.C., 20554. The Secretary's new office will be open for business, as usual, from 8:00 a.m. to 5:30 p.m., Mondays through Fridays, except holidays. Paper filings will be received at a designated counter located at TW–A325 in the 12th Street lobby of the building, where filers will be able to receive their ''stamp and return'' copy, upon request.

The Commission expects to complete its relocation to The Portals within the next six months. For the public's convenience during this transition period, the Office of the Secretary will accept paper filings at 1919 M Street, N.W., Room 222, but *only between the hours of 4:00 p.m. to 5:30 p.m., Mondays through Fridays,* except holidays. If requested, ''stamp and return'' copies will be provided at the time of filing. This temporary filing site will be closed on the date that the Commission completes its relocation to The Portals.

The Commission encourages those wishing to file paper documents to begin making these filings at the Portals building. In addition, to ensure the expeditious receipt and distribution of paper filings during the transition period, the public should follow the established ''Guidelines for Uniform Filings.'' These guidelines are printed below.

Please forward any questions to Magalie Roman Salas, FCC Secretary; Bill Caton, Deputy Secretary; or Ruth Dancey, Assistant Secretary, at 202–418–0300.

Guidelines for Uniform Filings

To enable the staff of the Office of the Secretary to provide the most efficient service to you, please follow these guidelines in preparing and submitting ''uniform'' filings.

a. Your filing package should be properly fastened and consist of an original document and the proper number of copies. If your filing is ''self-explanatory,'' no cover letter is required.

Note: For filings containing more than one docket number, please submit two (2) additional copies for each docket number listed.

b. To obtain a ''stamp and return'' copy, place an extra copy of either the cover letter or the filing on top of your package. This copy will be returned to you.

c. Confidential filings should be clearly marked ''CONFIDENTIAL,'' ''NOT FOR PUBLIC INSPECTION'' and placed in a separate envelope.

d. *Ex parte* documents should be clearly labeled ''*EX PARTE*''.

e. Always include a contact name, address and telephone number.

f. Finally, bring your filing to the designated filing counter at the Federal Communications Commission, 445 12th Street, SW, 12th Street Lobby, TW–A325, during the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday, except legal holidays. Your filing package should be ''ready for submission''—collated, signed, and properly fastened.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–28989 Filed 10–28–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, November 3, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 5, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–25: Mason Tenders District Council of Greater

New York by counsel, Lawrence E. Scherer.

Electronic Filing for Presidential Committees: Announcement of Effective Date for 11 C.F.R. § 9003.1 and § 9003.1.

Revised Status of Regulations.

Administrative Matters.

Time Change of Public Hearing to 9:00 a.m. on Wednesday, November 18, 1998

DATE & TIME: Wednesday, November 18, 1998 at 9:00 A.M.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Hearing Will Be Open to the Public.

MATTERS BEFORE THE COMMISSION: ''Soft Money'' Regs.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–29106 Filed 10–27–98; 11:56 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009648A–099.

Title: Inter-American Freight Conference.

Parties: A.P. Moller-Maersk Line, CSAV/Braztrans Joint Service, Crowley American Transport, Inc., Ivaran Lines Limited d/b/a/ Ivaran Lines, Libra Navegacao SA, Companhia de Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas, Empresa de Navegacao Alianca S.A., Columbus Line, Mexican Line Limited, Sea-Land Service, Inc., APL Co. Pte. Ltd., Transroll Navieras Express, Compagnie Generale Maritime S.A., TNX Transportes Ltda., Euroatlantic Container Line S.A.

Synopsis: The proposed modification adds a new Article 5.05 to the agreement, that authorizes any two or more of the parties to discuss and agree on rationalization of vessels and/or vessel capacity operated or to be operated in the trade.

Agreement No.: 203/011637.

Title: The MLL/TMG/Columbus/Maruba Cooperative Working Agreement.

Parties: Mexican Line Limited, Transportation Maritime Grancolombiana, S.A., Columbus Line, Maruba S.C.A.

Synopsis: The proposed Agreement would permit the parties to charter space to one another, coordinate their vessel services, utilize common terminals and other shore side services, interchange equipment, reach non-binding rate agreement, and aggregate cargo under service contracts in the trade between United States Pacific Coast ports, and inland U.S. points via such ports, and Pacific Coast ports and inland points in Mexico and Central and South America. The parties have requested a shortened review period.

Agreement No.: 224–03158–011.

Title: NY–NJ Ecuadorian Lease Agreement.

Parties: The Port Authority of New York and New Jersey, Ecuadorian Line, Inc.

Synopsis: The amendment agreement provides for the surrender of the lessee's lease rights to the Port Authority and for a guaranteed amount of cargo to be moved through Howland Hook Marine Terminal. The agreement runs through September 30, 2001.

Agreement No.: 231–201051–003

Title: Atlantic Coast Public Marine Terminal Discussion Agreement

Parties: The Port Authority of New York and New Jersey Georgia Ports Authority Maryland Port Authority North Carolina State Ports Authority South Carolina State Ports Authority Virginia Port Authority Port of Philadelphia and Camden, Inc.

Synposis: The agreement amendment changes the requirement for admission to membership in the agreement to unanimous consent by current members.

Dated: October 23, 1998.

By the order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–28953 Filed 10–28–98; 8:45 am]

BILLING CODE 6730–01–M

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 23, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Homestead Financial Corporation, ESOP, Beatrice, Nebraska; to acquire an additional 8.91 percent, for a total of 38.22 percent, of the voting shares of Homestead Financial Corporation, Beatrice, Nebraska; and thereby indirectly acquire First National Bank & Trust Company, of Beatrice, Beatrice, Nebraska.

Board of Governors of the Federal Reserve System, October 26, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–29041 Filed 10-28-98; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Disposal of the Volunteer Army Ammunition Plant (VAAP) Chattanooga, Tennessee

Pursuant to the requirements of the National Environmental Policy Act

(NEAP) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4C, GSA announces its Notice of Intent (NOI) to prepare an EIS for the proposed disposal of the Volunteer Army Ammunition Plant. The proposed action includes the disposal of all of real property associated with this government owned facility. The property consists of about 6,500 acres of land including buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, rights of way, and natural undeveloped land.

The EIS will address the potential impacts of two alternatives: the Proposed Action (Disposal Alternative), and No-Action Alternative (Continued Federal Ownership). The EIS will examine the short and long term impacts to both natural environment and impacts to the surrounding community. The Disposal Alternative will be further refined into a series of alternative proposed land use scenarios. These will be developed with the input from the local community through the scoping process. As the scoping proceeds, land use and development scenarios will be presented to the community for comment and will be addressed in the Draft EIS. GSA will solicit community input throughout this process, and will incorporate community comments into the decision process.

After the scoping is completed, GSA will present potential land use plans to the community in the Draft Environmental Impact Statement for comment. GSA will hold a Public Meeting during the Draft EIS 45-day comment period to solicit comments from the community. Although this schedule is tentative, GSA anticipates this will occur in April 1999. After the Draft, GSA will issue a Final EIS. A decision on the Disposal and land use development will not be made until 30 days after the release of the Final EIS. GSA anticipates this decision will be rendered by August 1999.

The EIS will seek to disclose the reasonable and foreseeable impacts that will result from this proposed Disposal Alternative, as well as the No Action Alternative, will seek to minimize these impacts and mitigate them where practical. As part of the Public Scoping process, GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer, (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3010, Atlanta, GA 30365, or FAX: Mr. Phil Youngberg at 404–331–4540. Comments should be submitted in writing.

GSA will conduct a Public Scoping Meeting to solicit comments, and to address general questions concerning the proposed action and NEPA. The first Scoping Meeting will be held at Central High School on Thursday November 19th at 6:30 PM. GSA will place a Public Notice of this and all subsequent public meetings in the Chattanooga Free Press approximately two weeks prior to the event. GSA will also notify persons and organizations by direct mail.

Dated: October 21, 1998.

Phil Youngberg,

Regional Environmental Officer (4PT).

[FR Doc. 98–28991 Filed 10–28–98; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History; Meeting

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9 a.m. to 4 p.m. on Monday, November 12, 1998, from 9 a.m. to 4 p.m. on Tuesday, November 13, 1998, at the State Department East Auditorium, 2201 C Street, NW, Washington DC 20520.

PURPOSE: The meeting is called to update members on committee operations and activities. Guest speakers will address known events or celebrations of women (past or present) in their local community and/or nationally. Participants may wish to make a statement covering personal interests in the history of women in America or share thoughts on appropriate commemorative events.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov.* Under 41 CFR 101–6.1015(b)(2) less than 15 days notice of the meeting is provided due to delays in organizing schedules.

Dated: October 23, 1998.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 98–28913 Filed 10–28–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, November 20, 1998, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Nancy Foster, Coordinator of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852, (301) 594–1349, ext. 1307.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6662 no later than November 13, 1998.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. Harold S. Luft, Ph.D., the Council chairman, will preside.

II. Agenda

On Friday, November 20, 1998, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman.

The Administrator, AHCPR, will present the status of current Agency programs and initiatives. Tentative agenda items include the strategic directions for the Agency's research on access, cost and use of health care services, children's health issues, cultural competency and the implementation and evaluation of evidence based practice centers. Agenda items are subject to change as priorities dictate. The meeting will adjourn at 4:00 p.m.

Dated: October 22, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–28909 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–0718 and 76N–0377; DESI 7661]

Eli Lilly & Co. and Bristol-Myers Squibb Co.; Withdrawal of Approval of Three New Drug Applications for Estrogen-Androgen Combination Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new drug applications (NDA's) for estrogen-androgen combination drugs. The NDA's are held by Eli Lilly & Co. and Bristol-Myers Squibb Co. The products are no longer marketed. Both companies requested that the NDA's be withdrawn and waived their opportunity for a hearing. The products will be removed from the list of drug products with effective approvals.

EFFECTIVE DATE: OCTOBER 29, 1998.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: Previous **Federal Register** notices regarding the regulatory status of the three applications named below, as well as two others (NDA's 10–597 and 11–267), were published on September 8, 1972 (37 FR 18225), and September 29, 1976 (41 FR 43112). (The approvals of NDA 10–597 (Tace with Androgen Capsules containing chlorotrianisone and methyltestosterone) and NDA 11–267 (Halodrin Tablets containing fluoxymesterone and ethinyl estradiol) were withdrawn in **Federal Register** notices of June 25, 1993 (58 FR 34466), and March 2, 1994 (59 FR 9989), respectively; see also 43 FR 49564 (October 24, 1978), which was a proposal to withdraw approval of estrogen-containing drug products labeled for use in postpartum breast engorgement.)

By letter dated June 5, 1998, Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543, requested that FDA withdraw approval of NDA 9–545 (Deladumone OB Injection and Deladumone Injection, each containing testosterone enanthate and estradiol valerate), stating that the marketing of Deladumone OB Injection was discontinued in 1989 when the indication for postpartum breast engorgement was withdrawn (noting that this was the only indication for Deladumone OB Injection), and that the marketing of Deladumone Injection was discontinued in 1991 because there was no longer a significant patient population requiring the concurrent therapy of an estrogen and an androgen in a fixed dose.

By letters dated July 15, 1998, and July 30, 1998, Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, requested that FDA withdraw approval of NDA 7–661 (Tylosterone Tablets) and NDA 8–099 (Tylosterone Injection), both containing diethylstylbestrol and methyltestosterone, stating that the marketing of both products was discontinued in 1988 because there was no longer a significant patient population requiring the concurrent therapy of an estrogen and an androgen in a fixed dose.

Both applicants waived their opportunity for a hearing. The agency concurs in the applicants' finding that there is not a significant patient population requiring the concurrent therapy of an estrogen and an androgen in a fixed dose.

Approval of a new drug application will be withdrawn if there is a lack of substantial evidence that the drug product covered by the application has the clinical effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling (21 U.S.C. 355(e)). For fixed combination prescription drugs, such substantial evidence exists only if each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy, as defined in the labeling for the drug (21 CFR 300.50). Estrogen and androgen fixed-dose combination products, therefore, lack substantial evidence of effectiveness due to the fact that there is not a significant patient population requiring the concurrent therapy of an estrogen and an androgen in a fixed dose.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.70 and 5.82), approval of NDA's 7–661, 8–099, and 9–545 and all amendments and supplements thereto, is hereby withdrawn for the reasons stated above, effective October 29, 1998.. Under 21 CFR 314.161 and 314.162(a)(1), four of the estrogen and androgen fixed-dose combination products named above (NDA's 7–661, 8–099, 9–545, and 11–267) will be removed from the list of drug products with effective approvals published in FDA's publication, ''Approved Drug Products with Therapeutic Equivalence Evaluations.'' FDA will not approve or accept ANDA's that refer to these drug products.

Dated: October 22, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–29049 Filed 10-28-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 13, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will participate in a general scientific discussion of allogeneic transplantation with a focus on haplo-identical transplantation and other high risk transplantations.

Procedure: On November 13, 1998, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 13, 1998, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to discuss issues related to past and pending biologics license applications and investigational new drug applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–28906 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 16, 1998, 8:30 a.m. to 5:30 p.m., and on November 17, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Kennedy Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 16, 1998, the committee will discuss: (1) New drug application (NDA) 20–886 Panretin® (alitretinoin) Gel 0.1 percent, Ligand Pharmaceuticals Inc., indicated for the first-line topical treatment of cutaneous lesions in patients with acquired immune deficiency syndrome (AIDS)-related Kaposi's sarcoma; and (2) NDA 21–041 DepoCyt™ (cytarabine liposome injection), DepoTech Corp. indicated for the intrathecal treatment of lymphomatous meningitis. On November 17, 1998, the committee will discuss the labeling of NDA 17–970/S–040 Nolvadex® (tamoxifen citrate), Zeneca Pharmaceuticals, and whether the indication should be ''for reducing the short term incidence of breast cancer'' in women at high risk of developing the disease or ''as a preventative agent for the reduction of breast cancer in women at high risk for developing the disease. The term prevention indicates a reduction in the incidence (risk) of invasive breast cancer over the period of the NSABP P–1 trial, and does not necessarily imply that the initiation of breast cancer has been prevented or that the tumors have been permanently eliminated * * *.''

Procedure: On November 16, 1998, from 8:30 a.m. to 5:30 p.m., and on November 17, 1998, from 8 a.m. to 1:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 1998. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9 a.m., and between approximately 1:45 p.m. and 2 p.m. on November 16, 1998, and between approximately 8:15 a.m. and 8:45 a.m. on November 17, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session will be conducted for interested persons who have submitted their request to speak by November 9, 1998, to address issues specific to the submission or topic before the committee.

Closed Committee Deliberations: On November 17, 1998, from 1:30 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss personal conflict of interest issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–28905 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Product and Clinical Development of Tumor Vaccines; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Product and Clinical Development of Tumor Vaccines. This workshop, which is cosponsored by FDA and the National Institutes of Health, will assist FDA and the interested public in developing policies and standards for product and clinical development for tumor vaccines.

Date and Time: The public workshop will be held on Thursday, December 10,

7:30 a.m. to 5 p.m., and Friday, December 11, 1998, 8 a.m. to 5:30 p.m.

Location: The public workshop will be held at the Jack Masur Auditorium, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Contact: Abdur Razzaque, Center for Biologics Evaluation and Research (HFM–530), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0675.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) to Karen Blackburn, Tascon, Inc., 1803 Research Blvd., suite 305, Rockville, MD 20850, 301–315–9000, ext. 514, FAX 301–738–9786, or e-mail kblackburn@tascon.com.

On December 10, 1998, beginning at 7:30 a.m., registration will be held at the public workshop location on a space available basis. However, because space is limited, interested parties are encouraged to register early. There is no registration fee for the public workshop.

If you need special accommodations due to a disability, please contact Karen Blackburn at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The goals of the workshop include discussing the following: (1) Regulatory considerations in the clinical development process for tumor vaccines; (2) morphological, immunophenotypic,and functional characteristics of dendritic cells; (3) current methods for physicochemical and functional characterization of autologous and allogeneic whole cell tumor vaccines, tumor cell lysates, polyvalent tumor antigen preparations, antigen presenting cells and other cell-derived vaccines; (4) novel preclinical strategies and biological/immunological assessments in early clinical trials; and (5) issues regarding the detection and monitoring of tumor cell contamination in cellular vaccines. The information obtained from these discussions will assist FDA and the interested public in developing policies and standards for product and clinical development for tumor vaccines.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

Dated: October 21, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–28908 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 19, 1998, 8 a.m. to 6:30 p.m., and on November 20, 1998, 8 a.m. to 3:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Persons: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 19, 1998, the committee will discuss issues relating to the use of cell substrates. On November 20, 1998, the committee will discuss issues relating to the manufacture and safety of live attenuated influenza virus vaccines.

Procedure: On November 19, 1998, from 8 a.m. to 1:30 p.m., and on November 20, 1998, from 8 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact persons by November 12, 1998. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:30 a.m. on November 19, 1998, and between approximately 8:15 a.m. and 8:30 a.m., and between approximately 10:20 a.m. and 10:50 a.m. on November 20, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 12, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 19, 1998, from 1:30 p.m. to 6:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). These portions of the meeting will be closed to discuss issues relating to pending or proposed investigational new drug applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–28904 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0451]

Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guide entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (the guide). The guide is designed to provide voluntary guidance on good agricultural practices and good management practices and to minimize microbial food safety hazards common to the growing, harvesting, packing, and transport of most fruits and vegetables sold to consumers in an unprocessed or minimally processed (i.e., raw) form. This action is in response to the Presidential initiative to ensure the safety of imported and domestic fresh

fruits and vegetables. The voluntary guide is intended to assist growers, packers, and other operators in continuing to improve the safety of domestic and imported fresh produce.

ADDRESSES: Submit written requests for single copies of the guide to Lou Carson, Center for Food Safety and Applied Nutrition (HFS–32), 200 C St. SW., Washington, DC 20204, 202–260–8920. Send one self-addressed, self-adhesive label to assist that office in processing your request. Requests for copies of the guide should be identified with the docket number found in brackets in the heading of this document. A copy of the guide is available for public examination in the Dockets Management Branch, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. The guide is also accessible via the FDA home page on the World Wide Web (WWW) (http://www.fda.gov).

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–32), 200 C St. SW., Washington, DC 20204, 202–205–5916, FAX 202–260–9653, e-mail: ''jsaltsma@bangate.fda.gov'', or Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2975, FAX 202–205–4422, e-mail: ''msmith1@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION: On October 2, 1997, the President announced the ''Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables'' (fresh produce safety initiative). As part of the fresh produce safety initiative, the President directed the Secretary of the Department of Health and Human Services (DHHS) and the Secretary of the U.S. Department of Agriculture (USDA), in cooperation with the agricultural community, to issue within 1 year guidance on good agricultural practices and good manufacturing practices for fresh fruits and vegetables. FDA is coordinating the effort for DHHS.

Between November 17, 1997, and December 12, 1997, FDA and USDA held a series of public meetings to provide the details on a broad approach on how to minimize microbial contamination of produce through the control of water, manure, worker health and hygiene, field and facility sanitation, and transportation. A draft guidance document entitled ''Working Draft: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruit and Vegetables'' was made available electronically on FDA's home page on the WWW (http://www.fda.gov) and at each public meeting.

In the **Federal Register** notice of April 13, 1998 (63 FR 18029), FDA announced the availability of a proposed guidance document entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables.'' The proposed guidance document was also made available on FDA's home page and by mail to interested persons. The proposed guidance document responded to comments received on the working draft of the guidance document, as well as to comments received at the public meetings. FDA, in cooperation with USDA, held three public meetings between May 19, 1997, and May 27, 1998, to provide an overview of, and to seek additional public input on, the proposed guidance document. Transcripts of these meetings and all comments received on the proposed guide are on file in the Dockets Management Branch (address above) under the docket number appearing above and are accessible via the FDA home page on the WWW (http://www.fda.gov/ohrms/dockets).

In the April 13, 1998, notice, the agency asked for comments on the proposed guide and requested information about current agricultural practices, the cost of applying good agricultural and management practices, and ways to analyze costs and benefits to assess cost effective measures (63 FR 18029 at 18030). In response to that request, FDA received about 40 letters containing one or more comments in addition to many oral comments at the three public meetings held in May 1998. FDA has reviewed all of these comments, both oral and written, and has modified the proposed guide, as appropriate, in light of those comments. A number of comments were beyond the specific content of the guide. Therefore, the agency has prepared a written analysis of those comments, including those that addressed the agency's request for information about costs/benefits of agricultural practices, and has placed it in the docket (Docket No. 97N–0451). This analysis is available for review at the Dockets Management Branch (address above) or may be obtained via FDA's home page on the WWW (http://www.fda.gov/ohrms/dockets) under the docket number.

FDA is announcing the availability of the final guide. The guide responds to comments received on the proposed guidance document and represents FDA's and USDA's current thinking on strategies to minimize microbial hazards for fresh produce. The guide does not create or confer any rights for or on any person and does not operate to bind FDA, USDA, or the public. The guide is being distributed in accordance with the FDA's policy for Level 1 guidance documents as set out in the agency's Good Guidance Practices, published in the **Federal Register** of February 27, 1997 (62 FR 8961).

FDA believes that this guidance serves as an important step in addressing the risks of foodborne illness associated with fresh produce. There are, at this time, limited data available on current agricultural practices. To gather better data and provide a foundation for the agency's future evaluation of the impact of the guidance, FDA is working with USDA's National Agricultural Statistics Service (NASS) to design and conduct a survey of current domestic agricultural production and packing practices for fresh produce. The objective of the survey is to document the prevalence and variety of practices currently used in the production of fresh fruits and vegetables in the United States. The survey will focus on practices that are addressed in the guide, including practices related to agricultural water quality, manure management, packinghouse sanitation, and worker hygiene. The survey development process has included an industry advisory group to help ensure the effectiveness of the survey. NASS plans to conduct a pilot test survey of two States and approximately 30 commodities in fiscal year (FY) 1999 and, depending on resources, to conduct a nationwide survey in FY 2000.

Dated: October 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–29022 Filed 10–26–98; 2:39 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0217]

Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Proposals to Increase the Legal Availability of Animal Drugs for Minor

Species and Minor Uses.'' The report contains proposals for legislative, regulatory, and policy changes to the approval process for new animal drugs intended for use in minor species and for minor uses in major species (minor use drugs). This report is the agency's response to the requirement of the Animal Drug Availability Act of 1996 (the ADAA) that the Secretary of Health and Human Services (the Secretary) consider and announce proposals to facilitate approvals for minor use drugs. Implementation of these proposals should result in an increase in the number of approved new animal drugs for use in minor species and for minor uses.

DATES: Written comments may be provided at any time.

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

FDA will also accept e-mail comments. They should be labeled as comments, be identified with the docket number found in brackets in the heading of this document, and be addressed to ''jbutlerl@bangate.fda.gov''. The agency will make paper copies of the comments and will place them in the public docket along with the comments submitted in writing.

Submit written requests for single copies of ''Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses'' to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Enclose one self-addressed adhesive label to assist that office in processing your requests. Copies of this report are also posted on the Center for Veterinary Medicine (CVM) Internet home page at ''http://www.fda.gov/cvm''.

FOR FURTHER INFORMATION CONTACT:

For questions about section 2(f) of the ADAA: George A. (Bert) Mitchell, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5587, FAX 301–594–1807, e-mail ''gmitchel@bangate.fda.gov'', or

For further information about the changes proposed in the report to the approval process: Linda Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614, FAX 301–594–2297, e-mail ''lwilmot@bangate.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background.

On October 9, 1996, the President signed the ADAA (Pub. L. 104–250) into law. Enactment of the ADAA reflected Congress' concerns about the lack of availability of approved new animal drugs. Among other things, the legislation recognized particular problems relating to the availability of approved new animal drugs for minor uses in major species and for use in minor species (minor use drugs).

Section 2(f) of the ADAA directs the Secretary to consider legislative and regulatory options for facilitating approval under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) of new animal drugs intended for use in minor species or for minor uses. The ADAA statute further requires the Secretary to announce within 18 months after the date of enactment proposals for legislative or regulatory change to the approval process for new animal drugs intended for use in minor species or for minor uses. Publication of the notice announcing the availability of ''Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses, ADAA Minor Use/Minor Species Working Group'' fulfills that statutory obligation.

The authority of the Secretary regarding new animal drug approvals is delegated to the Commissioner of Food and Drugs by 21 CFR 5.10, and that authority is redelegated to the Director and Deputy Director of CVM in 21 CFR 5.83. In order to respond to the ADAA mandate, CVM established a working group of scientific, legal, and policy experts in animal drug approval and minor species issues to explore possible solutions to the problem and to draft a report with proposals. The working group, recognizing that public input was critical to the development of proposals that would most broadly and effectively facilitate approvals, solicited comments from the public through a **Federal Register** document entitled ''Request for Comments on Development of Options to Encourage Animal Drug Approvals for Minor Species and Minor Uses'' (62 FR 33781, June 23, 1997).

In addition, on December 19, 1997, CVM posted on its Internet home page a discussion draft entitled ''Proposals to Increase the Legal Availability of Animal Drugs for Minor Species and Minor Uses.'' The discussion draft, which was identified as a ''working document,'' included discussions of several options for possible change. CVM encouraged the public to comment on the concepts in the working document and to express any related concerns, and asked for comments on a number of specific questions that focused on particular issues.

CVM received 110 comments in response to the two documents. Among those commenting were minor-species producer groups, exotic-animal (e.g., guinea pigs, ornamental fish) breeders, pharmaceutical companies, veterinarians, zoological organizations, the American Veterinary Medical Association, trade associations, pet shop owners, university faculty, and members of other Federal and State regulatory agencies. The comments were extensive, indicating a high level of interest in the draft proposals. All the comments were reviewed and many have been incorporated into the recommendations. The comments are on file in Docket No. 97N–0217 and may be viewed in the Dockets Management Branch (address above) and on FDA's home page at ''http://www.fda.gov''.

II. The Report

While the proposals in this report represent FDA's best thinking for facilitating the approval of animal drugs for minor uses and for use in minor species, the report is not intended to represent formal administration position in support of any of the proposals. FDA hopes that the announcement of these proposals will engender further debate on these issues and stimulate the interest of drug sponsors, manufacturers, and individuals who care for and raise animals.

The report describes a range of legislative and regulatory proposals intended to facilitate minor use and minor species drug approvals and to otherwise increase the legal availability of drugs for minor uses and minor species. The proposals are as follows:

1. Creation by Statute of a ''Minor Use Animal Drug'' Program
2. Enhancement of Existing Programs for Data Development
3. Conditional Drug Approval for Minor Uses With No Human Food Safety Concern
4. An Alternate Process to Provide for Legal Marketing of New Animal Drugs for Minor Species With No Human Food Safety Concern
5. Other Legislative Options
6. Other Changes in Regulation or Policy

FDA has presented a broad array of options in response to the congressional charge to propose changes that would facilitate the approval of new animal drugs for minor species or minor uses. It is the agency's perception that neither the current animal drug approval process nor any other single approval process can adequately address the

enormous diversity of minor species for which animal drugs are needed. Each proposal has merit with respect to certain minor species or minor uses.

Many of the proposals require legislative change. Congress recognized the possibility that statutory changes might be needed in its charge at Section 2(f) of the ADAA. On close examination, the existing statutes simply fail to provide adequate options for FDA and sponsors to fully serve the minor species and minor use needs of the literally hundreds of animal species that people care for. To achieve the goal of increasing the availability of safe and effective drugs for minor species and minor uses, FDA concludes that Federal statutes must be amended.

FDA is willing to work with Congress and other concerned parties to further characterize any proposed statutory changes and to assist as requested and as appropriate in their enactment. If the act is amended as a result of these proposals, the agency will focus its efforts on issuing any necessary regulations through notice and comment rulemaking or otherwise implementing the statutory changes as directed. Increasing the availability of drugs for minor species and minor uses increases protection of public and animal health and is a significant issue for FDA.

III. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this report. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 16, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–28903 Filed 10–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R–263]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because we have determined that the information collection instrument in question is necessary for our contractor and subcontractor to carry out site visits of suppliers of durable medical equipment, prosthetics, orthotics, or supplies who wish to bill the Medicare program. These site visits are being carried out in accordance with an announcement by the President on January 24, 1998, that all such suppliers would receive site visits. The visits commenced on June 1, 1998, and the instrument was developed after we had gained some experience with the visits. We are requesting emergency clearance to maximize the benefits to be gained from this effort and to avoid discontinuity in this important fraud prevention mechanism.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within ten working days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection.

Title of Information Collection: On-Site Inspection for Durable Medical Equipment (DME). Supplier Location and Supporting Regulations in 42 CFR 424.57.

Form No.: HCFA-R–263 (OMB# 0938–NEW).

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA 855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 40,000.

Total Annual Responses: 40,000.

Total Annual Hours: 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees

referenced below, within ten working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

AND

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: October 22, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–29024 Filed 10–28–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–246]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of Currently Approved Collection.

Title of Information Collection: HEDIS 3.0 (Health Plan Data and Information Set) CAHPS (Consumer Assessment of Health Plans Study) Survey and Supporting Regulations 42 CFR 417.470, 417.126.

Form Number: HCFA-R–246 (OMB approval #: 0938–0732)

Use: This collection effort (CAHPS) will be used to hold the Medicare managed care industry accountable for the quality of care they are delivering. This requirement will allow HCFA to obtain the information necessary for the proper oversight of the program. It is critical to HCFA's mission that we collect and disseminate information that will help beneficiaries choose among plans, contribute to the improved quality of care through identification of quality improvement opportunities, and assist HCFA in carrying out its responsibilities.

Frequency: Annually.

Affected Public: Businesses or other for profit, Individuals or Households.

Number of Respondents: 150,240.

Total Annual Responses: 150,240.

Total Annual Hours Requested: 49,579.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 22, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–29025 Filed 10–28–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request, National Institutes of Health Loan Repayment Programs, Office of Loan Repayment and Scholarship

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Loan Repayment and Scholarship, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1998, pages 10404–10405 and allowed 60 days for public comment. One response to the notice was received. A revision reconciled this response. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* Revision of currently approved collection (OMB No. 0925–0361, expiration date 9/30/98). *Form Numbers:* NIH 2674–1, NIH 2874–2, and NIH 2674–3. *Need and Use of Information Collection:* NIH makes available financial assistance, in the form of educational loan repayment to M.D., Ph.D., D.D.S., D.M.D., and D.V.M. degree holders, or the equivalent, who perform biomedical or biobehavioral research in NIH intramural laboratories for a minimum of 2 years in research areas supporting the mission and priorities of the NIH. The AIDS Research Loan Program (AIDS–LRP) is authorized by Section 478A of the Public Health Service Act (42 U.S.C. 288–1); the General Research Loan Repayment Program (General-LRP) is authorized by Section 487C of the Public Health Service Act (42 U.S.C. 288–3); and the Clinical Research Loan Repayment Program (CR–LRP) is authorized by Section 487E (42 U.S.C. 288–5). The loan repayment programs can repay a maximum of $20,000 per year toward a participant's extant eligible educational loans, directly to lenders, in addition to NIH salary and benefits. Participants must have qualifying educational debt in excess of 20 percent of their annual NIH base salaries on the expected date of program eligibility. The information proposed for collection will be used by the Office of Loan Repayment and Scholarship to determine an applicant's eligibility for participation in the program. *Frequency of Response:* Initial application and annual renewal application. *Affected Public:* Applicants, financial institutions, recommenders. *Type of Respondents:* Physicians and other scientific or medical personnel. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicant	110	1.0	9.80	1,078
Recommenders	330	1.0	0.50	165
Financial Institutions	550	1.0	0.33	181
Totals	990			1,424

The annualized cost to respondents is estimated at $33,575.46. There are no capital costs, operating costs, or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Marc Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, National Institutes of Health, 7550 Wisconsin Avenue, Room 604, Bethesda, MD 20892–9121, or call non-toll free (301) 402–5666, or E-mail your request, including your address, to <Mhorowitz@nih.gov>.

Dated: October 20, 1998.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 98–28925 Filed 10–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural program and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: December 10–11, 1998.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, MD 20892.

Contact Person: Edward D. Korn, PHD, Director, Intramural Research, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 10, Room 7N214, Bethesda, MD 20892, 301/496–2116.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28923 Filed 10–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: October 30, 1998.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Elise D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, Suite 409, 600 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 6, 1998.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elise D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institute of

Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 6, 1998.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elise D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards of Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS).

Dated: October 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–28924 Filed 10–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–004126

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to export 1.2 Fiji Island banded iguanas (Brachylophus fasciatus) to the Adelaide Zoological Gardens, Australia for the purpose of enhancement of the survival and propagation of the species through captive breeding and education.

PRT–003853

Applicant: Lawrence C. Matthews, Hillsboro, OR.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–004161

Applicant: Lawrence A. Franks, Strugis, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–004209

Applicant: Stanely E. Rogers, Salem, OR.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus pygargus dorcas) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–004150

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to import biological samples from 5 diademed sifaka (Propithecus diadema) from Madagascar, for the purpose of enhancement of the survival of the species.

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: (703/358-2104); FAX: (703/358–2281).

Dated: October 23, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–28926 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Addendum #2 to the Assessment Plan for the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day comment period.

SUMMARY: Notice is given that document entitled: ''Initial Restoration and Compensation Determination Plan for the Assessment Plan for the Natural Resource Damage Assessment of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments, Part 1 Restoration Criteria'' will be available for public review and comment on the date of publication in the **Federal Register**.

The assessment, including the activities addressed in this addendum, will be conducted in accordance with the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the Addendum announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Addendum. Copies of the Addendum, and the ''Assessment Plan for the Natural Resource Damage Assessment of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments'' (''The Plan'') issued on October 14, 1997 (FR Doc. 97–26788), can be requested from the address listed below. All written comments will be considered and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted on or before January 27, 1999.

ADDRESSES: Requests for copies of the Addendum and/or the Plan may be made to: Supervisor, Ecological Services Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, Indiana 47403; (812) 334–4261, ext. 219.

or:

Natural Resource Trustee, Office of Legal Counsel, Indiana Department of Environmental Management, 100 N. Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015; (317) 232–7694.

Comments on the Addendum should be sent to the Indiana Department of

Environmental Management at the address listed above. The trustees will coordinate comment review.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify the suspected injuries to natural resources in the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments resulting from exposure to hazardous substances released by area steel mills, refineries and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended.

Marvin E. Moriarty,

Acting Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 98–29004 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–00]

Metting of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior .

ACTION: Meeting of the Central California Resource Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Resource Advisory Council for Central California will meet in Bishop, California.

DATES: November 13–14, 1998.

ADDRESSES: Patio Building, Tri-County Fairgrounds, Sierra Street and Fair Drive, Bishop, California.

SUPPLEMENTARY INFORMATION: The 12 member Central California Resource Advisory Council is appointed by the Secretary of the Interior to advise the Bureau of Land Management on public land issues. The Council meetings will begin at 8 a.m. both Friday and Saturday, November 13 and 14. Agenda items include a status report on standards and guidelines for grazing on federal lands so as to maintain healthy rangelands and how the new grazing regulations will be implemented; a discussion of public land issues by the new manager of the BLM-Bishop Field Office, Steve Addington: a report on progress of the prescribed fire program; and a discussion of local efforts to control invasive weeds. A field trip to the volcanic tablelands north of Bishop is scheduled for Friday afternoon. A public comment period is scheduled for 1 p.m., Saturday, November 14, when anyone may address the Council about any public land issue. Written comments will be accepted at the meeting, or at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone 805–391–6010.

Dated: October 22, 1998.

Ron Fellows,

Field Office Manager.

[FR Doc. 98–29030 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–08–1420–00]

Notice of Filing of Amended Protraction Diagrams; Arizona

October 15, 1998.

1. The amended protraction diagrams of the following described lands are scheduled to be officially filed in the Arizona State Office, Phoenix, Arizona, thirty (30) days from the date of this publication on the dates indicated:

The Amended Protraction Diagram of unsurveyed Township 1 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of partially surveyed Township 1 North, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of partially surveyed Township 1 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of partially surveyed Township 1 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 North, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of partially surveyed Township 3 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of partially surveyed Township 3 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 31/2 North, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 27½ East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted August 17, 1998.

The Amended Protraction Diagram of partially surveyed Township 5 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 6 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted August 13, 1998.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 23 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 24 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 19 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 20 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 8 North, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 23 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 24 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 8 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 18 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 19 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 10 North, Range 15½ East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 10 North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 10 North, Range 20 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 10½ North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of unsurveyed Township 11 North, Range 11½ East, Gila and Salt River Meridian, Arizona, was accepted September 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 1 South, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 South, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 12, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 South, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of partially surveyed Township 2 South, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 2 South, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 South, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of partially surveyed Township 3 South, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 3 South, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted July 28, 1998.

The Amended Protraction Diagram of partially surveyed Township 4 South, Range 28 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of partially surveyed Township 4 South, Range 30 East, Gila and Salt River Meridian, Arizona, was accepted August 11, 1998.

The Amended Protraction Diagram of unsurveyed Township 4 South, Range 32 East, Gila and Salt River Meridian, Arizona, was accepted July 27, 1998.

2. These amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described amended protraction diagrams will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended diagrams is received prior to the date of the official filings, the filings will be stayed pending consideration of the protest. These particular amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral, Surveyor of Arizona.

[FR Doc. 98–29034 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–05–1430–01; ALES 36757]

Public Land Order No. 7369; Revocation of Executive Order No.7722; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order in its entirety as to 40 acres of land withdrawn for the War Department and subsequently transferred to the Tennessee Valley Authority. The land has been conveyed out of Federal ownership.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Fakkema, BLM Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, 601–977–5400.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 7722, dated October 8, 1937, which transferred War Department lands to the Tennessee Valley Authority, is hereby revoked insofar as it affects the following described land:

Huntsville Principal Meridian

T. 4 S., R. 7 E.,
Sec. 28, NW¼NW¼.

The area described contains 40 acres in Jackson County.

2. Under authority vested to Tennessee Valley Authority, the land has been conveyed out of Federal ownership and therefore, this is a record clearing action only.

Dated: October 9, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–29032 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; AA–2788, AA–66499]

Public Land Order No. 7367; Revocation of Geological Survey Order Dated July 10, 1957, and Partial Revocation of Public Land Order No. 5603; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety a Geological Survey order which withdrew approximately 4,300 acres of public land for Bureau of Land Management Powersite Classification No. 439 and partially revokes a public land order which withdrew lands in aid of legislation. The land is no longer needed for the purposes for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to Public Land Order No. 5180, or Public Land Order No. 5186, both as amended.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. The Geological Survey Order dated July 10, 1957, which withdrew land for Powersite Classification No. 439 in the Chilkoot Lake and River area, and Public Land Order No. 5603, which withdrew land in aid of legislation, are hereby revoked insofar as they affect the following described land:

Copper River Meridian

All lands adjacent to Chilkoot Lake below the 200 foot contour and to a point on the Chilkoot River one-fourth mile downstream from the outlet of Chilkoot Lake located within:

T. 28 S., R. 57 E., unsurveyed,
Secs. 22, 26, 27, 34, 35, and 36.
T. 29 S., R. 58 E., partly unsurveyed,
Secs. 3, 4, 5, 9, 10, 11, 13, 14,15, and Secs. 22 to 26, inclusive.
T. 29 S., R. 59 E., unsurveyed,
Secs. 19 and 30.

The area described contains approximately 4,300 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available.

3. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, or Public Land Order No. 5186, both as amended, and any other withdrawal of record.

Dated: October 9, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–29035 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–08955 02]

Public Land Order No. 7368; Partial Revocation of Public Land Order No. 1992; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 13.95 acres of public land withdrawn for use by the Bureau of Reclamation for the Snake River Reclamation Project. The land is no longer needed for the purposes for which it was withdrawn. This revocation will allow the Bureau of Land Management to complete a pending land sale. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State

Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1992, which withdrew public lands for the Snake River Reclamation Project, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 4 S., R. 2 E.,
Sec. 6, lot 20.

The area described contains 13.95 acres in Owyhee County.

2. At 9 a.m. on November 30, 1998, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 30, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on November 30, 1998, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 9, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–29031 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1430–01; NMNM 94996/G–010–G8–0260]

Public Land Order No. 7366; Withdrawal of Public Lands for the Wild Rivers Special Management Area and the Guadalupe Mountain Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,972.14 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the recreational, cultural, wildlife, and visual resources of the Wild Rivers Special Management Area and the Guadalupe Mountain Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571, 505–758–8851.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Wild Rivers Special Management Area and Guadalupe Mountain Area of Critical Environmental Concern:

New Mexico Principal Meridian

T. 28 N., R. 12 E.,
Sec. 2, lot 6, S½NW¼NW¼, N½N½SW¼, N½NW¼SE¼, S½N½, and the area north of the Red River.
T. 29 N., R. 12 E.,
Sec. 10, lots 6 to 8, inclusive, NE¼SE¼, and S½S½;
Sec. 13, SW¼;
Sec. 14;
Sec. 15;
Sec. 20, lot 8;
Sec. 21, S½;
Sec. 22, E½, NW¼, and E½E½SW¼;
Sec. 23;
Sec. 24, NW¼ and W½SW¼;
Sec. 26, N½, SW¼, N½N½NE¼SE¼, SW¼NW¼NE¼SE¼, W½SW¼NE¼SE¼, NW¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼, and NW¼SE¼SW¼SE¼;
Sec. 27, E½E½ and E½W½E½;
Sec. 34, E½;
Sec. 35, W½NW¼, W½E½NW¼SW¼, W½NW¼SW¼, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, and SW¼SW¼SW¼SW¼.

The areas described aggregate 4,972.14 acres in Taos County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: October 9, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–28947 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–09–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey, in two sheets, of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Black Hills Meridian, South Dakota

T. 1 N., R. 7 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of section 5, Township 31 North, Range 17 West, Principal Meridian, Montana, was accepted October, 19, 1998.

This survey was executed by personnel of the Bureau of Land Management and was necessary to identify and establish boundaries of the South Dakota National Guard.

A copy of the preceding described plat, in two sheets, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, in two sheets, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: October 23, 1998.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–29033 Filed 10–28–98; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–811 (Preliminary)]

Drams of One Megabit and Above From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–811 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of dynamic random access memory semiconductors (DRAMs) of one megabit and above, provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 7, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by December 14, 1998.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 22, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 22, 1998, by Micron Technology, Inc., Boise, Idaho.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 13, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Robert Carr (202–205–3402) not later than November 10, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 18, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: October 23, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–28998 Filed 10–28–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is here appointed to a three-year term on the Department's Performance Review Board: Carl J. Lowe.

FOR FURTHER INFORMATION CONTACT: Ms. Tali R. Stepp, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue N.W., Washington, D.C. 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 21st day of October, 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–29000 Filed 10–28–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Final Fiscal Year 1999 Welfare-to-Work Planning Estimates for State Formula Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final Welfare-to-Work (WtW) planning estimates for State formula grants for Fiscal Year (FY) 1999.

FOR FURTHER INFORMATION CONTACT: For programmatic issues, contact Ms. Stephanie Curtis, Office of Welfare-to-Work, Room C–4524, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–0024. For funding issues, contact Ms. Sherryl Bailey, Office of the Comptroller, Room C–5307, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–5774. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing the final WtW State formula grant planning estimates for FY 99. These planning estimates are based on the appropriations for DOL for FY 99. Attached is a listing of the final FY 99 State formula grant planning estimates and the final FY 98 estimates.

The Attachment shows the FY 99 WtW planning estimates for the States totaling $1,029,750,000, which is that portion of the appropriation earmarked for State formula grants. For all States, Puerto Rico, the Virgin Islands, Guam and the District of Columbia, the WtW planning estimates were determined by the statutory formula contained in Section 403(a)(5)(A)(v) of the Social Security Act (42 U.S.C. 603(a)(5)(A)(v)). This formula weights the following data elements equally:

—The percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the United States; and,

—The percentage represented by the number of adults who are recipients of assistance under Temporary Assistance for Needy Families (TANF) divided by the number of adults in the United States who are recipients of assistance under TANF.

For each State, Puerto Rico and the District of Columbia, the planning estimate is not less than 0.25 percent of the available amount for the FY pursuant to section 403(a)(5)(A)(iii) of the Social Security Act (42 U.S.C. 603(a)(5)(A)(iii)).

This is the same formula which was used in the previous FY.

Signed at Washington, DC, the 21st day of October, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

BILLING CODE 4510–30–M

Attachment

10/15/98

U. S. Department of Labor
Employment and Training Administration

FY 99 Welfare-to-Work State Formula Grants
Final Planning Estimates vs 1998 Final

	Final 1998	Final 1999	Difference	% Difference
Total	$1,104,750,000	$1,029,750,000	($75,000,000)	-6.8%
Alabama	13,977,955	13,016,958	(960,997)	-6.9%
Alaska	2,926,500	2,708,771	(217,729)	-7.4%
Arizona	17,417,668	16,246,885	(1,170,783)	-6.7%
Arkansas	8,490,290	7,931,847	(558,443)	-6.6%
California	190,417,247	177,227,536	(13,189,711)	-6.9%
Colorado	9,878,865	9,213,801	(665,064)	-6.7%
Connecticut	12,005,943	11,183,704	(822,239)	-6.8%
Delaware	2,761,875	2,574,375	(187,500)	-6.8%
District of Columbia	4,646,445	4,326,723	(319,722)	-6.9%
Florida	50,756,512	47,414,039	(3,342,473)	-6.6%
Georgia	28,409,496	26,489,122	(1,920,374)	-6.8%
Hawaii	5,085,523	4,718,609	(366,914)	-7.2%
Idaho	2,793,847	2,620,213	(173,634)	-6.2%
Illinois	48,662,838	45,324,088	(3,338,750)	-6.9%
Indiana	14,552,407	13,578,432	(973,975)	-6.7%
Iowa	8,331,799	7,778,836	(552,963)	-6.6%
Kansas	6,668,399	6,202,330	(466,069)	-7.0%
Kentucky	17,722,913	16,520,839	(1,202,074)	-6.8%
Louisiana	23,707,338	22,112,662	(1,594,676)	-6.7%
Maine	5,156,417	4,804,389	(352,028)	-6.8%
Maryland	14,940,556	13,914,682	(1,025,874)	-6.9%
Massachusetts	20,692,295	19,260,350	(1,431,945)	-6.9%
Michigan	42,226,331	39,345,466	(2,880,865)	-6.8%
Minnesota	14,503,409	13,537,096	(966,313)	-6.7%
Mississippi	12,990,778	12,116,981	(873,797)	-6.7%
Missouri	19,767,398	18,431,857	(1,335,541)	-6.8%
Montana	3,194,443	2,974,780	(219,663)	-6.9%
Nebraska	4,021,585	3,763,041	(258,544)	-6.4%
Nevada	3,384,072	3,173,726	(210,346)	-6.2%
New Hampshire	2,761,875	2,574,375	(187,500)	-6.8%
New Jersey	23,257,092	21,708,979	(1,548,113)	-6.7%
New Mexico	9,715,600	9,058,956	(656,644)	-6.8%
New York	96,886,094	90,323,582	(6,562,512)	-6.8%
North Carolina	25,332,173	23,633,882	(1,698,291)	-6.7%
North Dakota	2,761,875	2,574,375	(187,500)	-6.8%
Ohio	44,608,022	41,587,166	(3,020,856)	-6.8%
Oklahoma	11,741,519	10,920,120	(821,399)	-7.0%
Oregon	8,636,930	8,084,329	(552,601)	-6.4%
Pennsylvania	44,295,711	41,358,070	(2,937,641)	-6.6%
Rhode Island	4,419,858	4,109,483	(310,375)	-7.0%
South Carolina	12,006,432	11,107,365	(899,067)	-7.5%
South Dakota	2,761,875	2,574,375	(187,500)	-6.8%
Tennessee	21,643,975	20,214,627	(1,429,348)	-6.6%
Texas	76,058,852	70,934,274	(5,124,578)	-6.7%
Utah	4,627,777	4,321,266	(306,511)	-6.6%
Vermont	2,761,875	2,574,375	(187,500)	-6.8%
Virginia	16,548,621	15,404,150	(1,144,471)	-6.9%
Washington	22,674,526	21,143,201	(1,531,325)	-6.8%
West Virginia	9,805,500	9,143,422	(662,078)	-6.8%
Wisconsin	12,885,951	12,032,182	(853,769)	-6.6%
Wyoming	2,761,875	2,574,375	(187,500)	-6.8%
Puerto Rico	34,566,095	32,219,489	(2,346,606)	-6.8%
Virgin Islands	553,501	515,924	(37,577)	-6.8%
Guam	585,252	545,520	(39,732)	-6.8%

[FR Doc. 98–28999 Filed 10–28–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the currently approved ''Producer Price Index Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before December 28, 1998. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It also is used for market and economic research and as a basic for escalation in long-term contracts and purchase agreements.

PPI data provide a description of the magnitude and composition of price change within the economy, and serve a wide range of governmental needs. These monthly indexes are closely followed and are viewed as sensitive indicators of the economic environment. Price data are vital in helping both the President and Congress set fiscal spending targets. Producer prices are monitored by the Federal Reserve Board Open Market Committee to help decide monetary policy. Federal policy-makers at the Department of Treasury and the Council of Economic Advisors use these statistics to help form and evaluate monetary and fiscal measurers, and to help interpret the general business environment. Furthermore, dollar-denominated measures of economic performance, such as the Gross Domestic Product, require accurate price data in order to convert nominal to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policy-makers when setting objectives and targets. In addition, it is common to find one or more PPIs, alone or in combination with other measures, used to escalate the diverted price of goods for government purchases.

In addition to governmental uses, PPI data are used by the private sector. Private industry uses PPI data for contact escalation. For one method of tax-related Last-In-First-Out (LIFO) inventory accounting, the Internal Revenue Service recommends that firms use PPI data for making calculations. Private businesses make extensive use of industrial-price data for planning and operating. Price trends are used to assess market conditions. Firms commonly compare the prices they pay for material inputs and the prices they receive for products that they make and sell with changes in similar PPIs.

Economic researchers and forecasters also use the PPI. Price indexes are widely used to probe and measure the interaction of market forces. Some examples of research topics that require extensive price data include: The identification of varying price elasticities and the degree of cost pass-through in the economy, the identification of potential lead and lag structures among price changes, and the identification of prices which exert major impacts throughout market structures. In the end, both policy and business planning are affected by the completeness of price trend descriptions.

II. Current actions

A description of recent and projected improvements meant to improve data completeness, increase efficiency, and reduce overall respondent burden to the maximum degree possible follows.

A. Disaggregation

Recent modifications made to disaggregation (i.e., item selection procedures) help to better define a publication structure that: (1) Is publishable in its entirety, (2) meets user needs, (3) is continuous, and (4) permits meaningful classification of current production. In order to obtain and maintain publishability of an entire structure, data now are collected using a method where price quotation selection is spread across predetermined product categories that correspond to the publication cells for a Standard Industrial Classification (SIC). The design of the revised disaggregation method nearly guarantees that the PPI will include enough price quotations to populate more lightly weighted cells. More heavily weighted (and populated) cells will receive slightly fewer price quotations than would have been received under the previous method. As a result, indexes constituting the PPI's publication objectives are much more likely to remain published over time. (For a complete description, see ''Change in PPI Publication Structures for Resampled Industries Introduced in January 1997.'' *PPI Detailed Report,* January 1997.)

B. Sampling

Recent modifications made to sampling procedures permit the PPI to update weights of industry indexes without initiating a new set of respondents. This process change is called ''recycling without resampling.'' The PPI also has made it operationally feasible to augment the sample of price quotations for a single product line within an SIC when necessary, rather than having to initiate a new sample of respondents. These capabilities are major breakthroughs, since they enable the PPI program to reduce both data

collection expenses and respondent burden, while permitting efficient re-allocation of program resources. Volatile, technologically sophisticated, and never-before-sampled SICs now may be updated or introduced into the PPI in a timelier manner.

C. Publication

The PPI mission includes a mandate requiring the program to work toward publication, wherever possible, of output price indexes for every four-digit industry defined by the SIC Manual. Historically, the PPI had been a family of indexes focusing on the Mining, Manufacturing, Agriculture, and Forestry sectors. This publication mandate has resulted in expansion of coverage into non-goods producing sectors of the economy. PPI sampling and data collection methodology have permitted systematic retrieval of specific service-industry classifications, and have resulted in the publication of various four-digit SIC aggregate indexes, as well as service-line and detailed service-category price indexes. The PPI currently publishes about fifty industry-based indexes for service-sector activities. Over the preceding decade, the PPI has introduced indexes encompassing Transportation, Real Estate, Health, Legal, Accounting, and many other service-based industries. Industry expansion continues on a regular basis, as funding permits. As recently as the July 1998 data release, the PPI introduced price indexes for SIC 6331 (Property and Casualty Insurance). In addition, the PPI is conducting research and preparing to collect data for Wholesale and Retail Trade Establishments, as well as Investment Bankers and Stock Brokers.

D. NAICS Classification

At present, sampling and data collection are conducted according to the SIC Manual system of organization. However, the PPI already has begun to make modifications that will permit smooth conversion to the North American Industrial Classification System (NAICS).

E. Electronic Data Collection

The PPI is developing electronic data collection procedures that will further contribute to reducing respondent burden and increasing efficiency. The program has been conducting a pilot project where a subset of respondents receives monthly price quotation forms and provides responses through fax technology. Response rates are better using fax, suggesting that this method of distributing and receiving the forms will be successful. Based on these results, the PPI plans to offer faxing as an option to approximately 30 percent of respondents in the near future.

F. Internet-Based Data Collection

BLS-wide efforts are being made to test the feasibility of permitting respondents to provide data through an Internet web-browser connection. While this procedure, if implemented, would result in a major data collection enhancement, a large number of security issues must be addressed first. Systems and procedures that protect the confidentiality of individual respondents' micro-data, as well as the integrity of the BLS network as a whole, must be developed and tested.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Producer Price Index Survey.

OMB Number: 1220–0008.

Affected Public: Business and other for-profit.

Form No.	Total number of respondents	Frequency	Total annual responses	Average time per response	Total burden hours
BLS 1810A, A1, B, C, C1, and E	6,342	Once	6,342	2 Hours	12, 684
BLS 473P	105,000	Monthly	1,260,000	18 Minutes	378,000

Total annual burden: 390,684 hours.

Total Burden Cost (capital/startup: $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 23rd day of October 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–29001 Filed 10–28–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Headache Coal Company, Inc.

[Docket No. M–98–87–C]

Headache Coal Company, Inc., Route 1, Box 419–A1, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i)(escapeways; bituminous and lignite mines) to its Roses Creek Mine (I.D. No. 15–17074) located in Whitley County, Kentucky. The petitioner proposes to install two 10 pound portable chemical fire extinguishers in the operators deck or in the scoop of each Mescher Tractor at the mine and have the extinguishers readily accessible to the operator; to have the equipment operator inspect each fire extinguisher daily before entering the escapeway; to have the equipment operator maintain at the mine a record of daily inspections; and to have a sufficient number of spare fire extinguishers maintained at the mine in case a defective fire extinguisher is detected. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Headache Coal Company, Inc.

[Docket No. M–98–88–C]

Headache Coal Company, Inc., Route 1, Box 419–A1, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Roses Creek Mine (I.D. No. 15–17074) located in Whitley County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards,

Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1998. Copies of these petitions are available for inspection at that address.

Dated: October 21, 1998.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–29026 Filed 10–28–98; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on November 17–20, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 17th, from 9:00 a.m. to 6:30 p.m. on November 18th and 19th, and from 9:30 a.m. to 4:00 p.m. on November 20th, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506. A portion of this meeting, from 9:30 a.m. to 11:00 a.m. on November 20th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on November 17th, from 9:00 a.m. to 6:30 p.m. on November 18th and 19th, and from 11:00 a.m. to 4:00 p.m. on November 20th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 22, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–28951 Filed 10–28–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Art Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Local Arts Agencies Section (Heritage & Preservation, Education & Access, and Planning & Stabilization categories) to the National Council on the Arts will be held on November 18–19, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 18th and from 8:30 a.m. to 5:30 p.m. on November 19th, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 3:15 p.m. to 4:15 p.m. on November 19th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on November 18th and from 9:00 a.m. to 3:15 p.m. and 4:15 p.m. to 5:30 p.m. on November 19th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 22, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–28952 Filed 10–28–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meetings

In accord with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

1. *Date and Times:* November 16, 1998; 8:30 to 5:00 p.m. each day.

Contact: Dr. Usha Varshney, Program Director, Division of Electrical Communications Systems, Room 675, 703–306–1340.

2. *Dates and Times:* November 16–17, 1998; 8:30 to 5:00 p.m. each day.

Contact: Dr. Magdy Iskander, Program Director, Division of Electrical Communications Systems, Room 675, 703–306–1340.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER–ECS proposals submitted to the Division as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28981 Filed 10–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: November 23, 1998; 8:30 am–5:00 pm.

Place: Room 770, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REU-Sites Panel proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with ten proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28982 Filed 10–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Monday, December 7, 1998, 8:30 a.m.–3:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/306–1096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28979 Filed 10–28–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science foundation announces the following meeting of the Special Emphasis Panel in Social, Behavioral, and Economic Sciences (#1766).

Date and Time: December 3–4, 1998; 8:30 a.m.–5:00 p.m.

Room: 320.

Contact Person: Ms. Bonney Sheahan, Division of Social, Behavioral, and Economic Research, 4201 Wilson Blvd. Arlington, VA 22230. Telephone: 703–306–1733.

Agenda: To review and evaluate Research Experiences for Undergraduates Site proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–28980 Filed 10–28–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456, STN 50–457]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois and Facility Operating License Nos. NPF–72 and NPF–77, issued to ComEd for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments present a full conversion from the current Technical Specifications (TS) to TS based on NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants,'' dated April 1995. NUREG–1431 has been developed through working groups composed of both NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. The December 13, 1996, application was supplemented by letters dated February 24, September 2, October 10, October 28 and December 8, 1997 and January 27, January 29, February 6, February 13, February 24, February 26, April 13, April 16, June 1, June 2, July 2, July 8, July 30, July 31, August 11, August 12, September 21, September 25, October 1, October 2, October 5 and October 15, 1998. As part of this submittal, ComEd has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (final policy statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current Byron and Braidwood TSs and using NUREG–1431 as a basis, developed a proposed set of improved TSs for Byron and Braidwood. The criteria in the final policy statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change which was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the existing TSs into five general groupings. These groupings are characterized as

administrative changes, relocated changes, more restrictive changes, less restrictive changes, and removed detail.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and do not involve technical changes to the existing TSs. The proposed changes include: (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses. For each requirement in the current Byron and Braidwood TSs that is more restrictive than the corresponding requirement in NUREG–1431 which the licensee proposes to retain in the improved Technical Specifications (iTSs), they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facilities because of specific design features of the plant.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the improved Standard Technical Specifications (iSTS). Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and, thus, provides a basis for these revised TSs or if relaxation of the requirements in the current TSs is warranted based on the justification provided by the licensee.

Some less restrictive changes involve removal of detail from the current TS to a licensee-controlled document. The details being removed from the current TS are not assumed to be an initiator of any analyzed event and are not assumed to mitigate accidents or transients. Therefore, the relocation does not involve a significant increase in the probability or consequences of an accident previously evaluated. Moving some details to a licensee-controlled document will not involve a significant change in design or operation of the plant and no hardware is being added to the plant as part of the proposed changes to the current TS. The changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not reduce the margin of safety since they have no impact on any safety analysis assumptions.

Some less restrictive changes involve the relocation of entire specifications, which contain surveillance requirements for structures, systems, components or variables that do not meet the criteria for inclusion in the TSs. Relocated changes are those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in that portion of their December 13, 1996, application titled, ''Application of Selection Criteria to the Byron/Braidwood Technical Specifications.'' The affected structures, systems components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents such as the Updated Final Safety Analysis Report (UFSAR), the TS Bases, the Technical Requirements Manual (TRM), the Selected Licensee Commitments or plant procedures. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 30, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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: for Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. 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 amendments 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.

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: Rulemaking 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 Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 13, 1996, as supplemented by letters dated February 24, September 2, October 10, October 28 and December 8, 1997 and January 27, January 29, February 6, February 13, February 24, February 26, April 13, April 16, June 1, June 2, July 2, July 8, July 30, July 31, August 11, August 12, September 21, September 25, October 1, October 2, October 5 and October 15, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at: for Byron, at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; and for Braidwood, at the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 23d day of October 1998.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28992 Filed 10–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Tu Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to the TU Electric (TUE or the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES), located in Somervell County, Texas.

The proposed amendment, requested by the licensee in a letter dated May 15, 1997, as supplemented by letters dated June 26, August 5, August 28, and September 24, and October 21, 1998, would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for CPSES. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 50–323);

Union Electric Company for Callaway Plant (Docket No. 50–483); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in a CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensees do not indicate or describe a change to the CTS.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS'; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications'; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases, for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table, sorted by CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG–1431 Specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include: (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 2 to its May 15, 1997, submittal, which is entitled, ''General Description and Assessment.'' The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are differences to the requirements in both the CTS and the Improved Standard Technical Specifications (NUREG–1431). These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS 3.1.7, a new action added for more than one digital rod position indicator per group inoperable.

2. ITS surveillance requirement (SR) 3.2.1.2, frequency, within 24 hours for

verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

3. ITS LCO 3.5.5, Action A, increases the reactor coolant pump seal injection flow completion time from 4 to 72 hours for the action.

4. ITS SR 3.6.3.7, note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.

5. ITS LCO 3.7.15, changes reference for the spent fuel pool level from that above top of fuel stored in racks to that above the top of racks.

6. ITS 5.6.5, adds refueling boron concentration limits to the core operating limits report.

7. ITS 5.7, changes limits for high radiation areas to reflect the requirements of revised 10 CFR Part 20.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 30, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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 University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. 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 a 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.

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 Mr. George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW, Washington, DC 20036, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 27, 1997, 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 University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 22nd day of October.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–28993 Filed 10–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23506; 812–11308]

John Hancock Institutional Series Trust; Notice of Application

October 23, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an exemption under section 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, John Hancock Institutional Series Trust (the ''Trust''), on behalf of its series John Hancock Multi-Sector Growth Fund (the ''Fund''), seeks an order to permit an in-kind redemption of shares of the Fund held by certain affiliated persons of the Fund.

FILING DATES: The application was filed on September 17, 1998 and amended on October 22, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 1998 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549. Applicant, 101 Huntington Avenue, Boston, Massachusetts 02199.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or May Kay Frech, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Trust, a Massachusetts business trust, is an open-end management investment company registered under the Act. The Fund is a series of the Trust. John Hancock Advisers, Inc. (the ''Adviser''), registered as an investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser to the Fund. The Adviser is owned by John Hancock Mutual Life Insurance Company (''JHMLIC'').

2. The Investment-Incentive Plan for John Hancock Mutual Life Insurance Company Employees (''TIP Plan'') and the John Hancock Savings and Investment Plan (''SIP Plan'') (collectively, the ''Plans'') are qualified retirement plans for the employees of JHMLIC and some of its subsidiaries. Investors Bank & Trust Company (''IBT'') serves as trustee for the Plans. As of September 1, 1998, the TIP Plan and the SIP Plan beneficially owned approximately 46.03% and 3.99%, respectively, of the outstanding shares of the Fund. IBT, as trustee for the Plans, has advised the Fund that it intends to redeem all shares of the Fund beneficially owned by the Plans.

3. The Fund's prospectus and statement of additional information (together, the ''Prospectus'') provide that, in limited circumstances, the Fund may satisfy all or part a redemption request by delivering portfolio securities to a redeeming shareholder. The board of trustees of the Trust (the ''Board''), including a majority of the non-interested trustees, has determined that the Fund should redeem the shares of the Plans in-kind to protect the Fund from the potentially adverse impact of liquidating a significant amount of portfolio securities if it satisfied the redemption request in cash.

4. The Fund proposes to redeem the shares of the Plans in the form of a *pro rata* distribution of each portfolio security held by the Fund after excluding: (a) securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities will be excluded from portfolio securities distributed in-kind to the Plans.

5. The Trust has elected to be governed by the provisions of rule 18f–1 under the Act which commits the Fund to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of $250,000 or 1% of the Fund's net asset value (''NAV'') at the beginning of such period. The Fund will comply with rule 18f–1.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to knowingly purchase from the registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person owning 5% or more of the outstanding voting securities of the other person; any person controlling or under common control with the other person; and an investment adviser to an investment company. The TIP Plan owns beneficially in excess of 25% of the Fund's shares and, thus, is an affiliated person of the Fund. The Plans and the Adviser may also be deemed to be under common control of JHMLIC, and thus, the Plans may be affiliated persons by an affiliated person of the Fund. Applicant states that, to the extent that the proposed in-kind redemption would involve the ''purchase'' of the Fund's portfolio securities by the Plans, the proposed in-kind redemption would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicant submits that the terms of the proposed in-kind redemption by the Plans meet the standards set forth in section 17(b) of the act. The Plans will have no choice as to the type of consideration to be received in the redemption and neither the Adviser nor IBT as trustee for the Plans will have any opportunity to select the portfolio securities to be distributed. Applicant also states that the securities to be distributed to the Plans will be valued in the same manner as they are valued for purposes of determining the Fund's NAV. In addition, applicant states that the proposed in-kind redemption is consistent with the investment policies of the Fund, as set forth in the Fund's Prospectus.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The portfolio securities of the Fund distributed to the Plans pursuant to the redemptions in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to the Plans. Cash will be paid for the portion of the in-kind distribution represented by the excluded assets set forth above less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Plans will be valued in the same manner as they would be valued for purposes of computing the Fund's NAV, which in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the most recent bid price.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption by the Plans occurred, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Plans, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29011 Filed 10–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40591; File No. SR–BSE–98–9]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Fees Schedule

October 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 1998, the Boston Stock Exchange, Inc. (''BSE'' or Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedules to: (1) eliminate fees for specialist odd lot trades; (2) increase specialist and floor broker occupancy fees; (3) revise transaction fee maximums under the Competing Specialist Initiative program; (4) increase Members' Dues; and (5) implement a revenue sharing program for member firms (''firms'').

The text of the proposed rule change is available at the Office of the Secretary, the BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend several of the Exchange's fee schedules as follows:

Floor Operation Fees

The Exchange proposes to eliminate specialist odd lot fees.[3] The purpose of this rule change is to support the Exchange's Floor Members' efforts in attracting additional odd lot order flow to the Exchange. The Exchange also proposes to increase specialist and floor broker occupancy fees from $400 per post per month to $500 per post per month. The purpose of this increase is to help offset the costs associated with operating the trading floor.

Additionally, the Exchange proposes to revise Competing Specialist Initiative (CSI) transaction fee maximums to:

CTA trade rank	Monthly transaction fee maximum
1–50	$400

[3] Specialist odd lot fees were $.75 per order.

CTA trade rank	Monthly transaction fee maximum
51–100	300
101–500	250
501+	*0

*Includes Exchange executions only. For all other executions, the applicable trade rate will continue to apply.

The purpose of this revision is to better align the maximum transaction fees per CSI issue with the associated value of trading each stock.

Membership and Other Fees

The Exchange proposes to increase Membership Dues from $400 to $600 per membership per quarter. The purpose of this revision is to better reflect the current value of a membership on the Exchange.

Transaction Fees

The Exchange proposes to implement a revenue sharing program (''credit'') with those firms that generate $50,000 in monthly automated transaction fees. This credit will be applied toward a firm's total monthly transaction fees (the total of Value Charge and Trade Recording and Comparison Fees) once a firm generates $50,000 in automated fees. However, no firm that receives the credit will pay less than $7,000 (compared to the current monthly maximum of $50,000) in automated transaction fees.

The amount of revenue to be shared will be determined by the total amount of transaction related revenue (Value Charge fees, Trade Recording fees, Specialist Transaction fees, Consolidated Tape Revenue and Net ITS fees) the Exchange generates on a monthly basis. Once the Exchange generates $1,300,000 in monthly transaction related revenue, 50% of the revenue above this amount will be shared with those firms that have generated $50,000 in monthly automated transaction revenue. This amount will be reviewed periodically by the Executive Committee of the Board of Governors and adjusted as required to meet the costs of operating the trading floor. Each firm that reaches the $50,000 cap will receive a pro-rata share of the excess revenue based on the total number of Exchange automated executions executed by those firms that reach the cap. However, if the Exchange does not attain its monthly revenue goal, no revenue will be shared for that month.

The application of the credit can be demonstrated by the following example: Suppose the Exchange generates $1,500,000 in transaction related revenue (as defined above) for the month. Additionally, four retail/institutional firms each generate $50,000 in automated transaction fees. Of the four firms, firm 1 executes 150,000 Exchange executions, firm 2—125,000, firm 3—75,000, and firm 4—25,000. Total Exchange executions for these four firms would be 375,000. Total revenue to be shared with these four firms would be $100,000 (($1,500,000 minus $1,300,000) multiplied by 50%). The credit would be allocated back such that firm 1 would receive a credit of $40,000 (150,000 divided by 375,000=40%, 40% of $100,000 $40,000), firm 2 would receive a credit of $33,333 (125,000 divided by 375,000=33.33%, 33.3% of $100,000=$33,333), firm 3 would receive a credit of $20,000 (75,000 divided by 375,000=20%, 20% of $100,000=$20,000), and firm 4 would receive a credit of $6,667 (25,000 divided by 375,000=6.67%, 6.67% of $100,000=$6,667).

The purpose of the above credit is to offer firms additional incentives to route order flow to the Exchange. This revision represents a continuing effort by the Exchange to provide its membership with a cost-effective market center in which to execute equity transactions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(4),[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(30(A) and the Act[7] and subparagraph (e)(2) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–98–9 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29009 Filed 10–29–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11 Acl–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11 Acl–3, respectively.

[7] 17 U.S.C. 78s(b)(30(A).

[8] 17 CFR 240.19b–4(e)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40584; File No. SR–CBOE–98–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals for FLEX Equity Options

October 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 23, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Interpretation .01 of CBOE Rule 24A.4(c)(2).[2] This interpretation limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE 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 those statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete Interpretation .01 under CBOE Rule 24A.4(c)(2). This interpretation limits the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options pursuant to Interpretation and Policy .01 under CBOE Rule 5.5. This policy was intended to eliminate uncertainty concerning what constitutes a ''qualified'' covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise of ''strike'' price is no lower than the ''lowest qualified benchmark price,'' which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX[3] Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, say, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

The Internal Revenue Service (''IRS'') has reviewed this issue and has a proposed regulation that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.[3] The public comment period for the proposed rule change closed on September 23, 1998[4] and the Exchange expects final regulations on this topic to be adopted some time after that date. The Exchange intends for the deletion of Interpretation .01 to coincide with the effective date of final regulations by the Internal Revenue Service. The effect of the IRS proposed rulemaking and the Exchange's proposed withdrawal of the limitation of the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

2. Statutory Basis

The proposed rule change, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanism of a free and open market in FLEX Equity Options, and thus is consistent with the objectives of Section 6(b)(5) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such 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 filing is consistent with the Act. Persons making

[1] 15 U.S.C. 78s(b)(1).

[2] This Interpretation was approved by the Commission in 1996. Securities Exchange Act Release No. 37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

[3] Department of the Treasury, Internal Revenue Service REG–104641–97, 63 FR 34616 (June 25, 1998).

[4] The IRS is holding a hearing on November 4, 1998 on the proposed rulemaking.

[5] 15 U.S.C. 78f(b)(5).

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 the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–39 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28851 Filed 10–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40572; File No. SR–CBOE–98–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Amend Its Minor Rule Violation Plan With Respect to Exercise of American-Style, Cash-Settled Index Options

October 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its minor rule violation plan[3] to include a schedule of summary fines for late exercise of cash-settled index options pursuant to CBOE Rule 11.1, Interpretation .03. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend the summary fine rule to add a schedule of fines for CBOE members who violate provisions of Exchange Rule 11.1 governing the exercise of American-style, cash-settled index options. Currently, CBOE trades one American-style, cash-settled index option contract, Standard & Poor's 100 Index options (''OEX''). Examples of violations that would be subject to the summary fine are the failure to submit an exercise advice; the submission of advice and no subsequent exercise; the submission of an exercise advice after the designated cut-off time; the submission of an exercise advice for an amount different than the amount exercised; and the time-stamping of an advice or exercise instruction memorandum prior to purchasing contracts. Violations occurring on a single trade date will generally be treated as one occurrence.[4]

[3] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order amending Rule 19d–1 under the Act).

[4] For example, of on any given day an individual member submits an exercise advice late to the Exchange and on the same day subsequently exercises a larger number of contracts than noted on the advice, both of these rule infractions (late advice submission and contract discrepancy) would be treated under the summary fine program as one violation. On the other hand, if two different market maker nominees of the same member firm each separately submit late exercise advices, such independent actions would be treated as two separate rule violations, even though they occurred on the same day. Where a matter is referred to the Business Conduct Committee (''BCC'') for action, instead of being handled under the summary fine program, the BCC would not be precluded from handling similar fact patterns differently. Telephone conversation between May Bender, Senior Vice President, Regulation, CBOE, and Robert Long, Attorney, Division of Market Regulation, Commission, on September 24, 1998.

There are three reasons why the Exchange determined to propose this schedule of summary fines. First, the Exchange believes most violations are inadvertent. Second, processing routine violations under the summary fine program would significantly decrease the administrative burden of regulatory and enforcement staff as well as that of the BCC.[5] Third, the membership of the Exchange would be more cognizant of the severity of penalties imposed and staff would be better able to expeditiously process routine violations under the summary fine program. The Exchange believes that the escalating schedule will deter members from considering fines for these violations as ''the cost of doing business.''

The summary fine schedule for Exchange Rule 11.1 violations, to be imposed on a rolling year look back period, is proposed to be as follows:

- *Violations No. 1 and 2*—Letter of Caution. However, if the violation involves 5 contracts or less and no unusual circumstances are noted, a Letter of Information will be issued. Letters of Information will not be counted for escalation purposes and a member cannot receive more than two Letters of Information during the rolling year look back period.
- *Violation 3*—Summary Fine of $1,000 plus $10 per contract.*
- *Violation 4*—Summary Fine of $2,000 plus $10 per contract.*
- *Violation 5*—Summary Fine of $4,000 plus $10 per contract.*
- *Violation 6 and Subsequent*—Referral to the BCC.

[5] From January 1996 through May 1998, approximately 111 investigative reports were reviewed at the Pre-BCC level and resulted in the issuance of Letters of Caution. A total of 15 Statement of Charges were authorized and/or settled by the BCC during the same time period. Five of these violations could have been resolved via the proposed summary fine program. The remaining violations either involved significant fines or the dissemination of news. Under the proposed program, investigative reports will not be prepared describing violative conduct and presented to the BCC and/or Pre-BCC. Rather, upon receipt and review of all necessary documentation, the Letter of Caution or Summary Fine Disciplinary Notice will be immediately issued to the member.

* Fines in excess of $5,000 will be deferred to the BCC.[6]

Some violations of CBOE Rule 11.1 with respect to American-style, cash-settled index options will not be resolved by summary fine. For example, violations that occur following the dissemination of significant news will not be resolved by way of summary fine. Additionally, violations where mitigating or aggravating circumstances are evident and it appears that a summary fine is inappropriate will be forwarded to the BCC.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to refine and enhance the Exchange's minor rule violation plan, thereby removing impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 published 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.

[6] Any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. Compare Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).

[7] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–41 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40590; File No. SR–PCX–98–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Specialist Post Fee Waiver Program Amendments

October 22, 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 24, 1998, as amended on October 13, 1998,[3] the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Specialist Post Fee Waiver Program (''Program'') by adding a requirement that any participating firm must remain in the Program for a minimum of six months or forego the benefits it has received during its participation in the Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On February 19, 1998, the Exchange's Specialist Post Fee Waiver Program became effective upon filing.[4] The Program is intended to provide financial incentives and short-term cost relief for specialist firms that are approved by the Exchange to operate specialist posts that will no longer be operated by another firm. Under the Program, if a specialist firm is approved to assume financial and operational responsibility for a specialist post, the specialist firm's fixed specialist fees are waived for three months. The Program also allows participating specialist firms to earn fee credits, based on monthly trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael Pierson, Senior Attorney, PCX, to Joshua Kans, Attorney, Division of Market Regulation, Commission, dated October 13, 1998 (''Amendment No. 1''). Amendment No. 1 eliminated a proposal to permit the Exchange's Executive Committee to determine whether to allow otherwise eligible specialists to participate in the Specialist Post Fee Waiver Program. Amendment No. 1 also clarified the scope of the rule change's future effect, and clarified the Exchange's justification for the rule change's immediate effectiveness.

[4] *See* Exchange Act Release No. 39745 (March 12, 1998), 63 FR 13440 (March 19, 1998) (notice of filing and immediate effectiveness of SR–PCX–98–11).

volumes, once the original three months have passed and the firm's fixed specialist fees have been reinstated. These fee credits, which are available for three months, are intended to serve as incentives for specialist firms to bring equity order flow to the Exchange.

The Exchange is proposing to modify the Program so that a specialist firm would need to maintain financial and operational responsibility for the new post for a minimum of six months in order to receive fee credits or fee waivers under the Program. This requirement is intended to assure that firms will not take on a new post for less than six months and then abandon it after having received the Program benefits. Accordingly if the Exchange approves a firm for participation in the Program, and the firm abandons the post before six months have passed, the firm will be obligated to pay the fixed specialist fees that otherwise would have applied while the firm was responsible for the post.

The Exchange notes that the terms of this rule filing will only apply to specialist firms that provide new backing to a specialist post under the Program after the effective date of this rule filing.

(2) Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange also believes that the proposal is consistent with Section 6(b)(4) of the Act[7] in that it is designed to provide for the equitable allocation of dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the 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 on the proposed rule change were neither solicited nor received.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (e)(2) of Rule 19b–4 thereunder[9] because it is establishing or changing a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[10] 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–49 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(2).

[10] In reviewing these rules, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40593; File No. SR–PHLX–98–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Stopping Stock

October 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule19b–4 thereunder,[2] notice is hereby given that on September 28, 1998, the Philadelphia Stock Exchange Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 220, Stopping Stock, which would define agreements to stop stock; establish the obligations of a member who agrees to stop stock; set forth market conditions under which a stop should be granted; establish a policy for executing stopped stock, including the price at which the order should be executed; and establish policies and procedures for execution of stop orders in minimum variation markets that are consistent with the rules of parity, priority and precedence. In addition, the Exchange proposes to amend Equity Floor Procedure Advice A–2 (''Advice A–2'') regarding stopped stock, in order to include reference to proposed Rule 220.

The text of the proposed rule change is available at the Office of the Secretary, PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In approving the PHLX's adoption of Advice A–2 regarding the stopping of stock in 1994, the Commission noted that the Exchange should also adopt a rule ''to ensure proper handling of stopped stock''.[3] The Exchange now proposes codifying and enhancing the procedures outlined in Advice A–2 as proposed Rule 220, Stopping Stock, including permitting PHLX specialists to stop stock in minimum variation markets.[4]

Currently stopping stock is a long established practice in equity markets. Reference to this practice presently appears in various rules in addition to Advice A–2. For instance, under Rule 229, Commentary .05, the Public Order Execution System (''POES'') window subjects certain orders to a delay of 30 seconds in order to receive an opportunity for price improvement. If such order is not improved, the order receives the Philadelphia Stock Exchange Automatic Communication and Execution (''PACE'') System quote at which it was stopped.[5] Further, Rule 229, Commentary .07 reflects the practice of stopping stock in the context of price improvement.[6] In fact, the Exchange's efforts in offering superior price improvement technology focus attention on stopping stock practices and the need for codification in PHLX Rules.

Under the proposed rule change, an agreement by a PHLX specialist to ''stop'' securities at a specified price will constitute a guarantee by a member or member organization of the purchase or sale of the securities at the specified price or better. In addition, the proposed rule states that all stopped orders will expire at the end of the trading day.

Proposed rule 220(b) will impose certain procedural requirements for the handling of stopped orders. The specialist will be permitted to stop stock upon the unsolicited request of another member when such member is acting on behalf of either a public customer account or an account in which such member or another member has an interest. After granting the stop, the specialist must display the order in his or her quote, including representative size, and reduce the spread by bidding (offering) at a price higher (lower) than the prevailing bid or offer if not executed immediately after being stopped.[7] This procedure applies in other than minimum variation markets, that is, where the spread in the quotation is greater than twice the minimum variation.

Proposed Rule 220(b)(2) prohibits the specialist from trading for his own account with any order he stopped while he is in possession of an order at an equal or better price than the price of the stopped order and, in each such case, the specialist must exercise due diligence to match the stopped order with such other order in his possession in accordance with Exchange Rules 119 and 120. This provision is similar to the restrictions of Exchange Rule 452, Limitations on Members Trading Because of Customer Orders, and is intended to expressly incorporate the due diligence requirement into the new rule. This provision currently appears in Advice A–2.

The Exchange also proposes to adopt procedures for stopping stock in minimum variation markets.[8] Stopping orders in minimum variation markets will occur primarily when the bid (offer) is at a price higher (lower) than the primary market for day. Specifically, proposed rule 220(d) would provide that in minimum variation markets, the specialist must change his or her quoted bid (offer) in order to reflect the size of the order being stopped. In cases of minimum variation markets, a stopped order to buy (sell) will be filled: (1) after a transaction takes place on the primary market at the stop price or higher (lower) or (2) when the share volume on the Exchange at the bid (offer) is exhausted. All orders stopped in minimum a variation markets shall be executed by the end of the trading day on which the order was stopped at no worse than the stopped price. In granting a stop in a minimum variation market, a specialist should change the quoted bid (offer) size in order to reflect the size of the order being stopped. This provision is similar to provisions of other exchanges.[9]

Section 220(c) provides that the member or member organization which agreed to stop the securities in order to obtain a favorable price will either provide price improvement or guarantee the stop price. If the order is executed at a less favorable price, then such member will be liable for the adjustment of the difference between the two prices.

As explained above, the proposed stopping stock rule codifies existing procedures for stopping stock on the Exchange floor. In addition, the practice of stopping stock enables Exchange specialists to offer primary market price protection, an important price improvement function of PHLX specialists, consistent with national market system principles by executing orders at better prices away from the primary market. Furthermore, it provides the opportunity for the specialist to improve upon the market and narrow the bid/offer spread.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities by codifying stopping stock procedures into PHLX rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

[3] *See* Securities Exchange Act Release No. 34614 (August 30, 1994)(SR–PHLX–93–41), 59 FR 32034.

[4] The proposed stopping stock rule is substantially similar to the stopping stock rules adopted by the Boston Stock Exchange (''BSE'') and the Chicago Stock Exchange (''CHX''). *See* BSE Chapter II, Section 38 and CHX Article XX, Rule 28.

[5] Securities Exchange Act Release No. 39225 (October 8, 1997) (SR–PHLX–97–32), 62 FR 54147.

[6] *See* Secutities Exchange Act Release Nos. 39548 (January 13, 1998) (SR–PHLX–97–23), 63 FR 3596; 39640 (February 10, 1998) (SR–PHLX–98–05), 63 FR 8510; and 40006 (May 19, 1998) (SR–PHLX–98–10) 63 FR 29288.

[7] *See* BSE, Chapter II, Section 38(b).

[8] *See* Proposed Rule 220(d).

[9] *See* BSE Chapter II, Section 38, and CHX Article XX, Rule 28 and CHX Article XX, Rule 37, interpretation and policy .03. Both of these programs were initially approved as pilot programs, which, thereafter, received permanent approval. *See* Securities Exchange Act Release Nos. 37134 (April 22, 1996) (SR–BSE–96–03), 61 FR 18634 and 36401 (October 20, 1995) (SR–CHX–95–100, 60 FR 54893.

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 Exchange 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 this 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 PHLX. All submissions should refer to File No. SR–PHLX–98–37 and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29010 Filed 10–28–98; 8:45 am]

BILLING CODE 5010–01–M

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2912]

Advisory Committee on International Economic Policy; Notice of Renewal

Renewal of Advisory Committee

The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Advisory Committee provides advice and assistance in the formulation of U.S. policy, positions, proposals and strategies for multilateral and bilateral negotiations particularly where the Department of State has the lead negotiating authority. More specifically, the Committee provides information and advice to the Secretary of State on effective integration of economic interests into overall foreign policy, the role and limits of international economic institutions, and State's role in advancing American commercial interests in a competitive global economy. The Under Secretary for Management has determined that the Committee is necessary and in the public interest.

The committee includes representatives of American organizations and institutions having an interest in international economic policy, and may include representatives of: American business with significant international trade interests; American labor unions; public interest groups; and/or trade and professional associations whose membership stands to be affected by international economic policy; legal or business consultants well-versed in such economic and trade aspects of foreign affairs; and academics representative of the various scholarly approaches to international economic policy.

The Assistant Secretary for Economic and Business Affairs chairs the Advisory Committee for the Secretary of State. The Committee meets quarterly. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information, please call: Sharon Rogers, Economic and Business Affairs Bureau, U.S. Department of State, (202) 647–5968.

Dated: October 16, 1998.

Holly A. Kenworthy,

Executive Secretary, Advisory Committee on International Economic Policy.

[FR Doc. 98–28948 Filed 10–28–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2914]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on December 2, 1998 from 1:30 p.m. to 3:30 p.m. to obtain public comment on the issues to be addressed at the December 14–18, 1998 Twentieth Consultative Meeting of the Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-first Scientific Group Meeting of the London Convention held in April 1998.

The meeting will be held at Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. David Redford, Chief, Marine Pollution Control Branch, telephone (202) 260–1952.

Dated: October 20, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–29036 Filed 10–28–98; 8:45 am]

BILLING CODE 4710–70–M

DEPARTMENT OF STATE

[Public Notice No. 2915]

Shipping Coordinating Committee Maritime Safety Committee, Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:00 A.M. on Wednesday, December 2, 1998, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC. The purpose of this meeting will be to finalize preparations for the 70th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for December 7–11, 1998, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Adoption of amendments to the Safety of Life at Sea.

b. Bulk carrier safety.

c. Implementation of the STCW Convention.

d. Matters related to the ISM Code.

e. Formal safety assessment.

f. Unsafe practices associated with the trafficking or transport of illegal migrant by sea, and

g. Report of five subcommittees—Radiocommunications and Search and

Rescue; Ship Design and Equipment; Flag State Implementation; Bulk Liquids and Gases; and Safety of Navigation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (C–MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: October 20, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–29037 Filed 10–28–98; 8:45 am]

Billing Code 4710–09–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Submission for OMB Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Office: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for TVA.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Economic Assessment of Waterway Docks and Terminals in the Tennessee Valley and Parts of the Surrounding National Inland Waterway Network.

Frequency of Use: Occasional.

Type of Affected Public: Federal, State and Local Governments, and Private Industry.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 450.

Estimated Number of Annual Responses: 1700.

Estimated Total Annual Burden Hours: 3400 hours.

Estimated Average Burden Hours Per Response: 2 hours.

Need For and Use of Information: The information collection is necessary to assess the service capability of waterway docks and terminals located in the Tennessee Valley and surrounding States. The data will be used to help potential industrial clients with decisions regarding transportation information and the handling capabilities of waterway facilities located on various river segments. This is vital information for industry when deciding where the most economical location is for a new plant site or project. In addition the data collection surrounding the waterway terminals located on the Tennessee River is necessary for use in updating TVA's river performance indicator.

Betty G. Metcalf,

Manager, Business Planning and Services.

[FR Doc. 98–29028 Filed 10–28–98; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to create system of records, DOT Mentoring Program Records System.

SUMMARY: The Department of Transportation, proposes to create a system of records subject to the Privacy Act of 1974. The records system is the DOT Mentoring Program Records System, DOT/ALL 12. The system is designed to allow prospective DOT mentees to find employees interested in becoming mentors, through use of the Internet. The system will also be used to monitor the number of employees participating in the DOT Mentoring Program, store participants' passwords, contact participants for survey purposes, provide mentor names to senior Departmental and Human Resource Management officials, and measure the success of cross modal mentoring.

EFFECTIVE DATE: December 8, 1998.

ADDRESS: Interested individuals may comment on this publication by writing to Ms. Vanester M. Williams, Privacy Act Coordinator, U.S. Department of Transportation, Office of the Chief Information Officer, S–80, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jan B. Karicher, System Manager, Departmental Office of Human Resource Management, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: DOT Systems of Records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address. The record system being proposed is being published in its entirety.

DOT/ALL 12

SYSTEM NAME:

DOT Mentoring Program Records System.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Department of Transportation [DOT], TASC Computer Center, 400 7th Street, SW., Washington, DC 20590–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All DOT personnel registering to become mentors.

b. All DOT personnel registering to be mentees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records are electronic and/or paper, and may include identifying information, such as name, office routing symbol, office phone and fax numbers, e-mail address, last four digits of the social security number, grade, and employing administration. All records reflect:

a. Name.
b. Operating Administration.
c. Last four digits of social security number (accessible only by system administrators).
d. Routing Symbol.
e. State in which employed.
f. Age range.
g. Pay plan.
h. Series.
i. Civilian or Military grade.
j. Work phone.
k. Work FAX.
l. Work e-mail address.
m. Work skills (Optional narrative).
n. Interests (Optional narrative).
o. Hobbies (Optional narrative).

Records for employees of the United States Coast Guard, both military and civilian may also include:

1. Past assignments.
2. Collateral duties.
3. Coast Guard training Received.
4. Coast Guard qualification codes.

5. Commissioning source.
6. Education level/Type of degree.
7. Ethnicity.
8. Marital status.
9. Current Operating Facility.

This information is optional for USCG employees only.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Under 5 USC 4103, the head of each agency is required to provide training for agency employees to assist in achieving the agency's mission and performance goals by improving employee and organization performance.

PURPOSE(S):

This system, as described in the Summary, will be used to match prospective DOT mentors with employees interested in becoming mentees. The system will also be used to monitor the number of employees participating in the DOT Mentoring Program, store participants' passwords, contact participants for survey purposes, provide mentor names to senior departmental and human resource management officials, and measure the success of cross modal mentoring.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To DOT HRM personnel to evaluate interest in the program.

b. To DOT HRM personnel to transmit survey instruments to participants.

c. To DOT HRM personnel to determine the amount of cross modal participation.

d. To Senior Management Officials for review.

Also, see the prefatory statement of General Routines Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on a DOT server, with restricted access.

RETRIEVABILITY:

Retrieval from the system is by category only (mentor/mentee), and can be accessed by the administrators of the DOT Mentoring Program.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments is similarly controlled by the System administrators. The system administrators of the DOT Mentoring Program are the only persons with access to employees' user names, passwords and social security number.

RETENTION AND DISPOSAL:

SYSTEM MANAGERS AND ADDRESS:

Jan B, Karicher, Department of Transportation, 400th Street, SW., Washington, DC 20590–0001, and William H. Freed, Department of Transportation, 400th Street, SW., Washington, DC 20590–0001.

NOTIFICATION PROCEDURE:

Inquiries should be directed to: U.S. Department of Transportation, Departmental Director of Human Resource Management (M–10), 400 7th St. SW., Washington, DC 20590–0001

RECORD ACCESS PROCEDURES:

Individuals may access their own data through the Internet, by going to the DOT HRM Home Page.

CONTESTING RECORD PROCEDURES:

None.

RECORD SOURCE CATEGORIES:

Individual registrants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 23, 1998.

Vanester M. Williams,

Departmental Privacy Act Coordinator, Office of the Chief Information Officer, Department of Transportation.

[FR Doc. 98–28978 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998 4621]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to commercial and recreational boat safety. The meetings will be open to the public.

DATES: NAVSAC will meet on Saturday, November 21, 1998, from 8 a.m. to 5 p.m. and on Sunday, November 22, 1998, from 8 a.m. to 5 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 16, 1998. Requests to have a copy of your material distributed to each member of the council should reach the Coast Guard on or before November 13, 1998.

ADDRESSES: NAVSAC will meet at the Monterey Bay Plaza Hotel, 400 Cannery Row, Monterey, CA 93940. Send written material and requests to make oral presentations to Ms. Margie Hegy, Commandant (G–M–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Ms. Margie Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Monterey Bay Panel's recommendations on actions needed to protect the Monterey Bay National Marine Sanctuary.

(2) Update on the Ports and Waterways Safety System (PAWSS) and universal carriage requirements for Automatic Identification System (AIS) technology.

(3) Vessels that lose propulsion or experience steering problems during transit.

(4) Electronic Chart Display and Information System (ECDIS)—Where are we?

(5) Marine Transportation System Initiative—What's next?

Procedural

All sessions of the meeting are open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than November 16, 1998. If you would like a copy of your material distributed to each member of the council in advance of the meeting, please submit 25 copies to the Executive Director no later than November 13, 1998.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities

or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: October 23, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–29045 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 19, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 26, 1998.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29323.

Petitioner: Million Air-Salt Lake City.

Sections of the FAR Affected: 14 CFR 61.157(g)(2).

Description of Relief Sought: To permit Million Air pilots to meet the flight training and testing requirements of 61.157 in a Level C flight simulator at a training facility that is not certificated under Part 142.

Docket No.: 26163.

Petitioner: US Airways, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(3); 61.56(h)(1), (2), and (3); 61.57(c)(3) and (d)(2); 61.58(e); 61.64(e)(3); 61.65(e)(2), and (g)(1) and (3); 61.67(c)(4) and (d)(2); 61.158(d)(1); 61.191(d); and 61.197(e).

Description of Relief Sought: To permit US Airways and persons who contract for services from US Airways to continue to use FAA-approved flight simulators to meet flight experience requirements described by those sections of part 61 without holding a certificate required by 14 CFR part 142.

Docket No: 28921.

Petitioner: Cessna Aircraft Company.

Sections of the FAR Affected: 14 CFR 91.211(b)(1)(ii).

Description of Relief Sought/ Disposition: To permit the operation of Cessna Model 750 Citation X (Citation X) aircraft at altitudes between flight level (FL) 350 and FL 510 without requiring at least one pilot at the controls of the airplane to wear and use FAA-approved oxygen mask.

Disposition, date, Exemption No. Denial, September 30, 1998, Exemption No. 6817.

Docket No.: 29032.

Petitioner: Lake Area Technical Institute.

Sections of the FAR Affected: 49 U.S.C. 40103(a)(37)(B).

Description of Relief Sought/ Disposition: To permit Lake Area Technical Institute to operate its Beechcraft Model U–21A aircraft (Beech U–21A) as a public aircraft.

Disposition, Date, Exemption No.

Denial, September 30, 1998, Exemption No. 6816.

Docket No.: 29204.

Petitioner: The Boeing Company.

Sections of the FAR Affected: 14 CFR 25.562(b)(2), 25.562(c)(5), and 25.562(c)(6).

Description of Relief Sought/ Disposition: To permit dynamic testing of he pilot/co-pilot seats without the specified misalignment floor warpage test requirements for pilots and co-pilots seats; to remove Head Injury Criterion from the pass/fail requirements for dynamic testing of the pilot (co-pilot seats only); and to allow the use of rational analysis in lieu of actual dynamic testing for the pilot/co-pilot and observer seats.

Disposition, Date, Exemption No.

Partial Grant, October 1, 1998, Exemption No. 6819.

Docket No.: 29228.

Petitioner: PSA Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii) and 121.441(a)(1) and (b)(1) and appendix F.

Description of Relief Sought/ Disposition: To permit PSA to establish an annual single-visit training program (SVTP) for its flight crewmembers and eventually transition to the advanced qualifications program (AQP) codified in Special Federal Aviation Regulation 58.

Disposition Date, Exemption No.

Grant, October 8, 1998, Exemption No. 6821.

[FR Doc. 98–29044 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Francois County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The RHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to the transportation system in St. Francois County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street Jefferson City, MO 65101, Telephone: (573) 636–7104 or Mr. Scott Meyer, District Engineer, Missouri

Department of Transportation, P.O. Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to improve Missouri Route 8, located at the cities of Desloge and Park Hills in St. Francois County, Missouri.

The proposed action is considered necessary to improve the safety and efficiency of Missouri Route 8. Alternatives under consideration include (1) taking no action, (2) implementing Transportation System Management (TSM) options, (3) upgrading and improving the existing roadways, and (4) constructing a new four-lane roadway from a point west of the Route P (west) intersection to U.S. Route 67 to the east, or Route 32 to the south, on a full or partial relocation. The location study conducted during preparation of the EIS will provide definitive alternatives for evaluation by the EIS. The proposed action will likely include transportation improvements in St. Francois County from west of Route P to U.S. Route 67 or Route 32.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Preliminary comments and information are currently being solicited from agencies. Prelocation meetings were held in November 1996. Preliminary improvement and relocation concepts were presented at public information meetings held in May 1998. Additional public meetings will be held to engage the regional community in the decision making process and to obtain public comment. Late in the study, a public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or to the MoDOT at the addresses provided above.

(Catalog of Federal domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued: October 16, 1998.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 98–29023 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Florida East Coast Railway Company (Waiver Petition Docket Number FRA–1998–4648)

The Florida East Coast Railway Company (FEC) seeks a waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR Section 232, in order to administer a test program involving a test train equipped with an Electronically Controlled Pneumatic Brake (ECPB) system, manufactured by GE Harris Railway Electronics, L.L.C. (GE Harris), that operates from a radio signal. FEC has the support of GE Harris in this pilot test program that is tentatively scheduled to run from November 1998 through July 1999. This test program would need relief from 49 CFR 232, Appendix B, Specifications and Requirements for Power Brakes and Appliances For Operating Power-Brake Systems For Freight Service, as well as, other areas of Part 232 that reference the control of train brakes by increasing or reducing brake pipe pressure.

An FEC aggregate unit train will be used for this test program. Approximately 100 aggregate cars (plus 10 spare rail cars) and a group of four FEC GP–40–3, 3000 hp locomotives, will be equipped with the GE Harris EP_x Direct Braking system. This train will operate as a unit train that makes a daily round trip from Miami to Cocoa (City Point), Florida, and return. In conjunction with FEC crew training, it is GE Harris' intention to provide field support prior to and during the test program. This field support will consist of manning the test rain with capable and knowledgeable personnel.

FEC and GE Harris offers the following information about the GE Harris EP_x Direct Braking system. The system uses electronically controlled brake valves to operate freight car brakes as opposed to solely pneumatically controlled brakes. The EP_x Direct Braking system on this test rain will perform identically to current ECPB trains in operation today. With the EP_x Direct Braking system there is a pneumatically controlled valve which monitors train brake pipe pressure. Should the brake pipe pressure fall at a rate of 16 psi per second (or greater), or if brake pipe pressure falls below 50 psi, the train is automatically placed into an emergency brake application condition. This valve provides a method to apply emergency brakes independent of the electronically controlled brake value mode of operation, thereby incorporating a redundant level of safety on the train analogous to the current emergency brake systems. Another capability of the EP_x Direct Braking system is a full emulation of the current ABDX style valve. This means the entire train can be run using brake pipe pressure to control the train's brakes (traditional pneumatic control mode), as an alternative to the electric mode should the need arise. The EP_x Direct Braking system consists of a Car Control Device, On-Car power source (Power Generator, Voltage Regulator, and Battery), and two antennae mounted to each rail car. Locomotive equipment consists of a Head End Unit (Operator's Interface), Communications Module (Radio and two antennae.

Prior to the actual test program train, GE Harris will functionally verify each pneumatic emulating electronic brake value against required performance parameters at their lab in Melbourne, Florida. A static rail car test will be performed in two separate phases. Phase 1 will validate the ABDX emulating mode of brake value operation. The second phase will validate the communication channel and network integrity. Upon completion of all static and brake rack tests, actual ECPB control will be tested in detail using the communications channel on the Florida East Coast Railroad. These tests will be conducted on sidings and/or controlled (closed to other traffic) track. A Test Readiness Review of all complied data will be conducted, whereby all parties will be provided with the actual test results of each previous test phase and how the results meet the performance requirements necessary to operate a test train safely and confidently. The test train will be assembled and after a week of successful static testing, a moving test

will take place, ultimately leading to the operation of a 100 car test train use in revenue service.

FEC believes the GE Harris EP_x Direct Braking system fully complies with the intent of the Railroad Power Brake and Drawbars regulations, 49 CFR Part 232, and that safety will not be compromised. In all phases of the test program, a fully functional emergency portion of the valve is in place and will react if activated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–98–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW, Room 7051, Washington, DC 20005.

Issued in Washington, DC on October 23, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–29005 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4578]

Notice of Receipt of Petition for Decision That Nonconforming 1987–1995 Mazda RX–7 Passenger Cars

Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1995 Mazda RX–7 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1995 Mazda RX–7 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–536).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1987–1995 Mazda RX–7 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1987–1995 Mazda RX–7 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1987–1995 Mazda RX–7 to its U.S. certified counterpart, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1987–1995 Mazda RX–7, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1987–1995 Mazda RX–7 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 I*mpact Protection for the Driver from the Steering Control System* (with respect to 1989 through 1991 hard top models alone, all others being exempt), 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the 1987–1995 Mazda RX–7 complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE

symbol on the brake failure indicator lamp; (b) replacement the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a high mounted stop light.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that 1990 and 1991 Mazda RX–7 convertibles have air bags, 1990 and 1991 hard top models have an automatic belts, all 1992 models have driver's side air bags, and all 1993 and later models have both driver's and passenger side air bags. The petitioner further states that all air bagged equipped models also have manual belts.

Standard No. 214 *Side Impact Protection:* Installation of U.S.-model doorbars in vehicles that are not already so equipped.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR part 541.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–28920 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4575]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1998 Mercedes-Benz E200 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1998 Mercedes-Benz E200 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Mercedes-Benz E200 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995–1998 Mercedes-Benz E200 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1998 Mercedes-Benz E220 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1995–1998 Mercedes-Benz E200 to the 1995–1998 Mercedes-Benz E220, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the 1995–1998 Mercedes-Benz E200, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1995–1998 Mercedes-Benz E220, or is

capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1995–1998 Mercedes-Benz E200 is identical to the 1995–1998 Mercedes-Benz E220 with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence. . . .,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the 1995–1998 Mercedes-Benz E200 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies and rear sidemarker lights; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of U.S.-model doorbars in vehicles that are not already so equipped.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 23, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–28921 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4576]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Mercedes-Benz CL500 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 Mercedes-Benz CL500 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1998 Mercedes-Benz CL500 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 30, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or

importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1998 Mercedes-Benz CL500 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1998 Mercedes-Benz CL500 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1998 Mercedes-Benz CL500 passenger cars to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1998 Mercedes-Benz CL500, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1998 Mercedes-Benz CL500 is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1998 Mercedes-Benz CL500 complies with the Bumper Standard found in 49 CFR part 581 and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: October 23, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–28922 Filed 10–28–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33609]

Norfolk Southern Railway Company; Purchase Exemption; Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323–25 the purchase by Norfolk Southern Railway Company from Union Pacific Railroad Company of approximately 15.3 miles of rail line located between milepost 104.8 at Monterey Junction, IL (including the southwest leg of the wye track between mileposts 104.5 and 104.8), and milepost 119.8 at DeCamp, IL, as well as certain yard tracks known as the Wiggins Track, the New Pass Track and

the CNW (A&E) Main Track at Madison, IL, subject to standard labor protective conditions.

DATES: This exemption will be effective on November 28, 1998. Petitions to reopen must be filed by November 18, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33609 must be filed with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. Also, send one copy to petitioner's representative: James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20423–0001. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services at (202) 565–1695.]

Board decision and notices are available on our website at WWW.STB.DOT.GOV.''

Decided: October 20, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–28888 Filed 10–28–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 21, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1384.

Form Number: IRS Form 3911.

Type of Review: Extension.

Title: Taxpayer Statement Regarding Refund.

Description: If taxpayer inquires about their nonreceipt of refund (or lost or stolen refund) and the refund has been issued, the information and taxpayer signature are needed to begin tracing action.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institution.

Estimated Number of Respondents: 520,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 43,160 hours.

OMB Number: 1545–1397.

Form Number: IRS Form 8453–OL.

Type of Review: Revision.

Title: U.S. Individual Income Tax Declaration for On-Line Filing.

Description: This form is used to secure taxpayer signatures and declarations in conjunction with the On-Line Electric Filing program. This form, together with the electronic transmission, comprises the taxpayer's return.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 12,500 hours.

OMB Number: 1545–1463.

Form Number: IRS Form 4996.

Type of Review: Extension.

Title: Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns.

Description: Form 4996 allows reporting agents to identify tax returns submitted on magnetic tapes or electronic transmissions. The reporting agent's signature is the signature of the ''composite return'' as required by Internal Revenue Regulations 31.6011(a)–8. Reporting agents are persons or organizations that submit tax returns or federal tax deposits on magnetic tape or via telecommunications.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 170 hours.

OMB Number: 1545–1465.

Regulation Project Number: PS–54–94 Final.

Type of Review: Extension.

Title: Environmental Settlement Funds—Classification.

Description: Section 7701 and the regulations thereunder classify entities for federal tax purposes as partnerships, associations, and trusts. Section 671 requires a grantor treated as an owner of a portion of a trust to include items in income. This regulation provides reporting rules.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–28945 Filed 10–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1612.

Regulation Project Number: REG–209830–96 Final.

Type of Review: Extension.

Title: Estate and Gift Tax Marital Deduction.

Description: The information requested in regulation section 20.2056(b)–7(d)(3)(ii) is necessary to provide a method for estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain an extension of time to make the qualified terminable interest property (QTIP) election under section 2056(b)(7)(B)(v).

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–28946 Filed 10–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Commission to Study Capital Budgeting, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meeting on Friday, November 13, 1998, of the Commission to Study Capital Budgeting includes the review and discussion of the second draft of its final report. The final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Date, Time and Place of the Next Commission Meeting

November 13, 1998, 9:00 a.m. to Noon

White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Dick Emery, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@omb.eop.gov, Website: http://www.whitehouse.gov/WH/EOP/OMB/PCSCB/

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–28917 Filed 10–28–98; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Educational Advising Program for Students and Scholars From the Middle East and North Africa

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to offer overseas educational advising, orientation and information services for international students and scholars in the Middle East and North Africa concerning opportunities in U.S. higher education. Awards will be made to support local educational information services in Egypt; Gaza; Jordan; Kuwait; Lebanon; Morocco; Syria; Tunisia; Yemen; and West Bank/Jerusalem; and Washington headquarters resource and training support to educational advisers and/or field office directors. These centers will facilitate international educational exchange through overseas educational advising, orientation, and information services for foreign students and scholars seeking information on opportunities in U.S. higher education. This program supports international educational exchange between countries of these regions and the U.S. through direct, field-based services. The assistance award will also include the provision of regional educational advising coordination, support, and training services, to be based in an appropriate location within the region.

The program awards up to $495,000 for a one-year period. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Grants are subject to the availability of funds for Fiscal Year 1999.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The POGI, a document describing Project Objectives, Goals, and Implementation, is included in the Solicitation Package. The POGI provides specific details on the scope of work and budgeting requirements.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the Educational Advising Program for Students and Scholars from the Middle East and North Africa and reference number E/ASA–99–10.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, November 20, 1998. Faxed documents will not be accepted, nor will documents postmarked on November 20, 1998, but received on a later date. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate program dates: Program should begin on or about January 1, 1999.

Duration: January 1, 1999–December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Advising and Student Services Branch (E/ASA), Room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–5434, fax: (202) 401–1433. Send a message via Internet to: advise@usia.gov to request a Solicitation Package. The Solicitation Package includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific

criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify ''Advising and Student Services Branch'' on all inquiries and correspondence Prospective applicants should read the complete Federal Register announcement before addressing inquiries to the Advising and Student Services staff or submitting their proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the complete application, including the documents specified under Tabs A through I in the ''Project Objectives, Goals, and Implementation'' (POGI) section of the Solicitation Package, should be sent to: U.S. Information Agency, Ref: E/ASA–99–10, Office of Grants Management, E/XE, Room 326, 301 4th St., S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts overseas for their review, with the goal of reducing the time needed to make the comments of overseas posts available in the Agency's grant review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirements (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Eligibility

A proposal will be deemed technically eligible if it:

(1) Fully adheres to the guidelines established herein and in the Solicitation Package;

(2) Is received by the deadline;

(3) Requests an assistance amount not in excess of $495,000.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures. All applicants will be notified of the results of the review process on or about December 14, 1998. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: October 16, 1998.

Judith Siegel,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 98–28889 Filed 10–28–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Internet Access and Training Program in the New Independent States for Alumni of USIA Academic and Professional Exchanges; Request for Proposals

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for assistance awards. Public and private non-profit organizations with at least four years experience in conducting international exchange and training programs, and demonstrated experience administering non-commercial Internet projects in the New Independent States, and meeting the provisions described in IRS regulation 26 CFR 1.501 © may apply to develop and administer the Internet Access and Training Program (IATP) in one or more of the following four categories: (1) Armenia, Azerbaijan, Georgia; (2) Ukraine, Belarus, Moldova; (3) Russian Federation; (4) Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan.

The goal of the Internet Access and Training Program (IATP) is to provide

alumni of USIA academic and professional exchange programs and other audiences identified by the United States Information Service (USIS) with free and open access to and training in the use of the Internet so that they can: (1) Continue information sharing, network building, communication, and collaboration with American counterparts, U.S. host institutions, and each other; (2) Obtain useful online information resources in their academic and professional fields as well as current information about the U.S.; (3) Publish information on the World Wide Web; and (4) Develop Internet-based information resources in local languages and/or English or other electronic projects that promote academic and professional exchange in the information age and strengthen U.S.—NIS cooperation and communication.

USIA program alumni include university and secondary school students, faculty, administrators, and scholars; government officials; NGO leaders; journalists; entrepreneurs; and diverse public, private, and third sector professionals who have participated in a long-term USIA academic program at a U.S. host institution or a short-term USIA professional visit or internship in the United States. Academic and professional fields of USIA program alumni include, but are not limited to, American Studies, Area Studies (NIS), Business, Civic Education, Economics, Education, Government, Journalism, Law, Liberty and Information Science, Political Science, Teaching English as a Foreign Language (TEFL), and Women's Studies.

For its Internet Access and Training Program, USIA seeks proposals that would (1) Provide sustainable, high speed access to the Internet for USIA program alumni and other USIS-identified audiences by upgrading and/or expanding IATP-supported public access Internet sites and/or other non-commercial Internet training centers at NIS libraries, universities, NGOs, government offices, and other venues; and/or by establishing new non-commercial Internet training centers at NIS partner institutions; and/or by upgrading or expanding academic or non-commercial networks, including IATP FreeNets and alumni networks; (2) Train staff at public access Internet sites and/or Internet training centers and/or non-commercial networks to meet the technical, training, and information needs of USIA program alumni, other end-users, and IATP reporting requirements; (3) Conduct systematic outreach to USIA program alumni, develop mechanisms to ensure that USIA program alumni receive free Internet access, training, and services at IATP sites and/or IATP FreeNets, and site usage reports; (4) Develop curriculum, course descriptions, materials, requirements, and schedules for Internet training courses at public access Internet sites or training centers and topics and schedules for specialized workshops or seminars; (5) Administer an open competition for grants for USIA program alumni and their local colleagues to develop Internet-based educational and professional resources in local languages in fields that support the building of free markets, democracy, and civil society. The program activities for each category of countries and individual countries have separate conditions and requirements which are stated in this announcement and detailed in the full Solicitation Package.

Proposals should reflect a thorough understanding of the telecommunications infrastructure in each country, technical requirements for implementing all aspects of the project, including procurement of appropriate equipment and services required to connect USIA program alumni and other USIS-identified audiences and institutions to the Internet and establish non-commercial Internet sites and/or enhance non-commercial networks, staff training and team building, curriculum and methodology for Internet courses, knowledge of useful Internet resources in fields of USIA program alumni, procedures for conducting a merit-based open competition for grants, and the political, economic, and social environment in which the program activity will take place.

USIA expects the IATP to achieve results on three levels: By empowering USIA program alumni to obtain and publish useful online information and enrich the content of the Internet in their local languages; by building the internal capacity of NIS partner institutions; and by forging public-private sector partnerships to promote continued academic and professional exchange in the information age between USIA program alumni and their American colleagues and counterparts. Applicant organizations must include a plan with clear benchmarks that demonstrates how permanent results will be achieved on each level, monitored, and reported to USIA.

Interested organizations should read the complete **Federal Register** Announcement and request a Solicitation Package from USIA prior to preparing a proposal and should consult with USIA and USIS posts about a reasonable and appropriate mix of program activities before submitting a proposal. USIA and USIS posts retain the right to recommend specific project activities and partner organizations and to approve or disapprove project activities and organizations recommended by grantee organizations.

Applicant organizations may apply for an assistance award for one or more of the four eligible categories of countries, but must submit a separate proposal and budget for each category. Applicant organizations may apply individually or join with other organizations in a consortium, via a subcontract arrangement, as long as one organization is designated to be the recipient of the grant. All proposals from consortia must cite the specific responsibilities of each member of the consortium and budget for each subcontract. USIA anticipates awarding one or more assistance awards for each category cited in this announcement. Grants may begin no earlier than January 15, 1999 and must be completed by July 15, 2001, for a maximum of 30 months.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the Internet Access and Training Program is provided through the Freedom Support Act. The legislation was established to assist the economic and democratic development of the New Independent States of the former Soviet Union. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–99–05.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, December 18, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due

date but received at a later date will not be accepted. It is the responsibility of the applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; telephone number (202) 205–0525; fax: (202) 260–7985 to request a Solicitation Package containing more detailed award criteria. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system. Please specify USIA Senior Program Manager Ilo Mai Harding on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the appliction should be sent to:

U.S. Information Agency, Ref.: E/AEE–99–05 (IATP), Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W. Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to our overseas posts for review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom, and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION: The IATP is intended to be a collaborative effort between USIA and U.S. and NIS public and private sector organizations. USIA expects applicant organizations to expand connectivity and Internet access by building on existing infrastructure, networks, and equipment, where feasible, and by demonstrating the ability to collaborate with diverse organizations. Such collaboration is intended to expand the scope and impact of USIA funding, avoid duplication of effort, and lay the groundwork for sustaining projects beyond the USIA grant.

USIA expects applicant organizations and other institutions participating in the IATP, including commercial and non-commercial Internet service providers, to provide in-kind contributions and cost-sharing, such as facilities, equipment, and services for public access Internet sites, training centers, and/or non-commercial networks and FreeNets; staff, and training materials, as appropriate. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Letters of support from potential IATP partners, written to USIA on institutional letterhead, may be attached to the proposal.

Guidelines

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Organizations should demonstrate tax regulation adherence in the proposal. Procurement of required computer and networking equipment and applications software must be in compliance with ''Year 2000'' requirements (Y2K). Applicant organizations should demonstrate compliance with Y2K requirements in the proposal.

Proposed Budget

For Category One, Freedom Support Act (FSA) funding is anticipated at $150,000 for Armenia; $350,000 for Azerbaijan; and $150,000 for Georgia. For Category Two, FSA funding is anticipated at $400,000 for Ukraine; $300,000 for Belarus; and $150,000 for Moldova. For Category Three, FSA funding is anticipated at $1,000,000 for the Russian Federation. For Category Four, FSA funding is anticipated at $400,000 for Kazakhstan; $200,000 for Kyrgyzstan; $300,000 for Uzbekistan; and $60,000 for Turkmenistan.

Applicant organizations must submit a comprehensive line item budget request for program and administrative costs based on the specific guidance in the Solicitation Package. Subcontracts should be cited as program expenses. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget, and a budget narrative demonstrating how costs were derived. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested will be considered highly competitive.

Allowable program costs include computer and network equipment, hardware, software, peripherals, supplies, services, monthly Internet access fees (if required), training materials, technical consultants, and salaries or honorarium for project personnel; advertising, materials, and honorarium for grants review committee. Allowable administrative costs include salaries and benefits for grantee organization employees, staff travel, shipping, and other direct and indirect costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully

adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program planning and ability to achieve objectives: Program objectives should be stated clearly and precisely and should reflect the applicant organization's experience implementing Internet projects, training programs, developing Internet courses, and administering grants competitions. A detailed work plan should explain how objectives will be achieved and include a timetable for completion of all technical and programmatic components of the project. Responsibilities of in-country partners should be clearly described.

2. Institutional capacity: Proposed personnel and organizational resources should be adequate and appropriate to achieve the project's goals. The narrative must demonstrate proven ability to handle the technical and programmatic requirements of the project and to effectively coordinate logistics and project components with diverse organizations.

3. Organization's track record: Relevant USIA and outside assessments of the organization's experience with exchange programs and Internet projects, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by USIA's Office of Contracts.

4. Multiplier effect/impact: Proposed programs must demonstrate an impact on the wider community through the sharing of information and the establishment of long-term institutional and individual linkages and network building.

5. Cost-effectiveness: Overhead and program and administrative costs should be kept as low as possible. All other items should be necessary and appropriate. Proposals should show cost-sharing from the applicant and from other sources.

6. Support of diversity and pluralism: Proposals should demonstrate substantive support of the Bureau's policy on diversity throughout the program.

7. Program evaluation: USIA is results oriented. Proposals must include a plan to evaluate the project's success, both as activities unfold and at the end of the project. A draft survey questionnaire plus a description of a methodology to be used link outcomes to original project objectives is required. USIA recommends that the proposal include draft questions for focus groups for staff and end—users at the public access Internet sites. Proposals must thoroughly discuss the methodology to be used in program evaluation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic report and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: October 19, 1998.

Dr. John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–28890 Filed 10–28–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0103]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether a child under 18 is entitled to benefits where the surviving spouse was not or is no longer entitled to benefits or whether a child age 18 or over is entitled to benefits regardless of the surviving spouse's entitlement.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 28, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0103'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Dependency and Indemnity Compensation by Child, VA Form 21–4183.

OMB Control Number: 2900–0103.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by a child under age 18 where the surviving spouse was not or is no longer entitled to benefits or by a child age 18 or over regardless of the surviving spouse's entitlement. The form is used in lieu of VA Form 21–534, Application for Dependency and Indemnity Compensation or Death Pension by Widow(er) or Child, in order to help reduce the reporting burden of a child under 18 when information about the deceased veteran's spouse is not required.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,900.

Dated: August 4, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–28984 Filed 10–28–98; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 63, No. 209

Thursday, October 29, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-6155-3]

RIN 2060-AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

Correction

In rule document 98–24836 beginning on page 56968 in the issue of Friday, October 23, 1998, make the following correction:

On page 57011, in § 89.318(c)(2)(iv)(B), in the third column the equation was inadvertently omitted and should appear as follows:

§ 89.318 [Corrected]

$$\%\text{Water Quench} = 100 \times \frac{D1 - AR}{D1} \times \frac{Wm}{Z1}$$

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

Correction

In rule document 98–27660 beginning on page 55333 in the issue of Thursday, October 15, 1998 make the following correction:

Appendix B to Part 4044 [Corrected]

On page 55334 the tables should appear as set forth below:

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2,* * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*	*	*			
November 1998	.0530	1–25	.0525	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_{11} + n_2$), interest rate i_2 shall apply from the valuation date for a period of y—n_1 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_{11} + n_2$), interest rate i_3 shall apply from the valuation date for a period of y—n_1—n_2 years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*			
61	11–1–98	12–1–98	3.75	4.00	4.00	4.00	7	8

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-288-AD; Amendment 39-10839; AD 98-21-31]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

Correction

In rule document 98–27480, beginning on page 55522, in the issue of Friday, October 16, 1998, in the **Action** line, ''NUREG'' should be removed.

BILLING CODE 1505-01-D

federal register

Thursday
October 29, 1998

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines.

The proposed rule is designed to reduce the risks to underground metal and nonmetal miners of serious health hazards that are associated with exposure to high concentrations of diesel particulate matter (dpm). DPM is a very small particle in diesel exhaust. Underground miners are exposed to far higher concentrations of this fine particulate than any other group of workers. The best available evidence indicates that such high exposures put these miners at excess risk of a variety of adverse health effects, including lung cancer.

The proposed rule for underground metal and nonmetal mines would establish a concentration limit for dpm, and require mine operators to use engineering and work practice controls to reduce dpm to that limit. Underground metal and nonmetal mine operators would also be required to implement certain ''best practice'' work controls similar to those already required of underground coal mine operators under MSHA's 1996 diesel equipment rule. These operators would also be required to train miners about the hazards of dpm exposure.

MSHA has already proposed a rule to control dpm exposures in underground coal mines in a separate notice to the public published in the **Federal Register** on April 9, 1998 (62 FR 17492).

DATES: Comments must be received on or before February 26, 1999. Submit written comments on the information collection requirements by February 26, 1999.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail, or dropped off in person at any MSHA office. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984, or any MSHA district or field office. The Agency will have copies of the proposal available for review by the mining community at each district and field office location, at the National Mine Health and Safety Health Academy, and at each technical support center. The document will also be available for loan to interested members of the public on an as needed basis. MSHA will also accept written comments from the mining community at the field and district offices, at the National Mine Health and Safety Academy, and at technical support centers. These comments will become a part of the official rulemaking record. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

Written comments on the information collection requirements may be submitted directly to the Office of Information and Regulatory Affairs, New Executive Office Building, 725 17th Street, NW., Rm. 10235, Washington, D.C. 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; MSHA; (703)235–1910.

SUPPLEMENTARY INFORMATION:

I. Questions and Answers About This Proposed Rule

(A) General Information of Interest to the Entire Mining Community

(1) What Actions Are Being Proposed?

MSHA has determined that action is essential to reduce the exposure of miners to a harmful substance emitted from diesel engines—and that regulations are needed for this purpose in underground mines. This notice proposes requirements for underground metal and nonmetal mines.

The harmful substance is known as diesel particulate matter (dpm). As shown in Figure I–1, average concentrations of dpm observed in dieselized underground mines are up to 200 times as high as average environmental exposures in the most heavily polluted urban areas and up to 10 times as high as median exposures estimated for the most heavily exposed workers in other occupational groups. The best available evidence indicates that exposure to such high concentrations of dpm puts miners at significantly increased risk of incurring serious health problems, including lung cancer.

The goal of the proposed rule is to reduce underground miner exposures to attain the highest degree of safety and health protection that is feasible.

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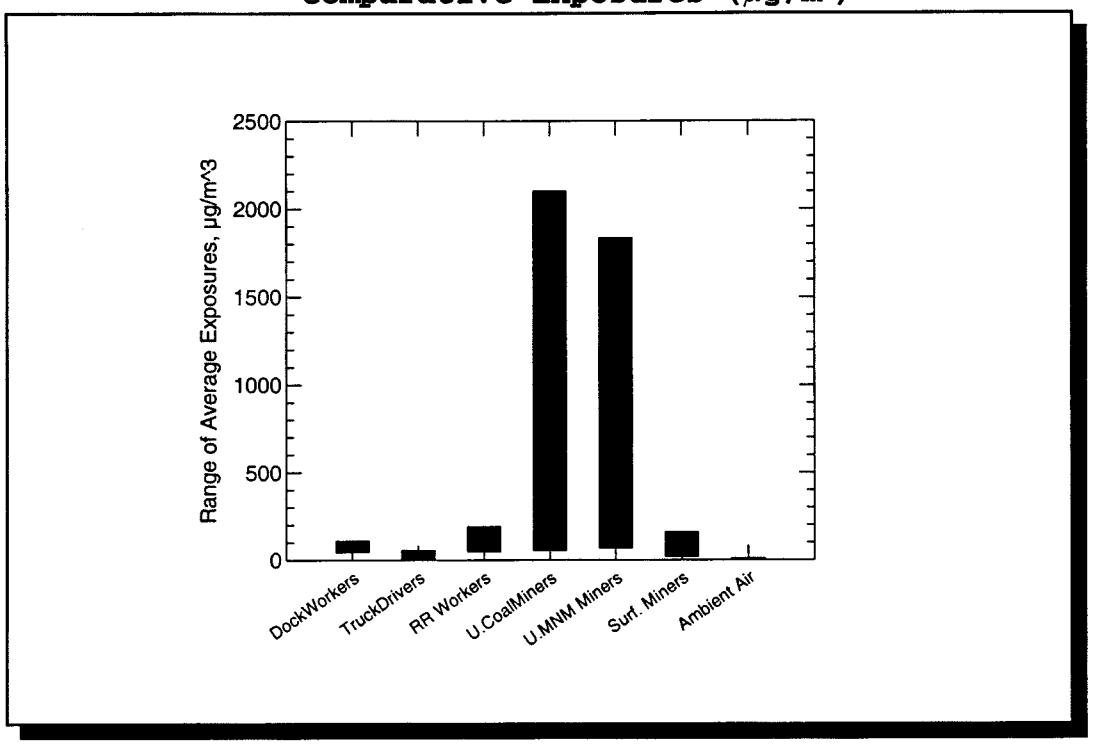
Figure I-1:
Comparative Exposures ($\mu g/m^3$)[1]



[1] Range of average dpm exposures observed at various mines for underground and surface miners compared to range of average exposures reported for other occupations and for urban ambient air. Averages are represented by median observed within mines for mine workers, by median as estimated with geometric mean reported for other occupations, and, for ambient air in urban environments, by the monthly mean estimated for different months and locations in Southern California. The range estimated for urban ambient air is roughly 1 to 10 $\mu g/m^3$. See part III for more detailed information.

Throughout this preamble, exposure information is presented in terms of "whole diesel particulate". Moreover, the information is presented in units of micrograms (μg) per cubic meter of air. However, in many of the references cited, exposure measurements may be expressed as milligrams (mg) per cubic meter of air.

1 mg/m^3 = 1 milligram per cubic meter of air
1 $\mu g/m^3$ = 1 microgram per cubic meter of air
1 milligram = 1000 micrograms.

To convert from milligrams to micrograms, multiply by 1000 -- or move the decimal point three places to the right. For example, 0.15 mg/m^3 = 150 $\mu g/m^3$.

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On April 9, 1998, (62 FR 17492), MSHA proposed a rule to achieve this goal in underground coal mines. MSHA's proposal would require the installation of high-efficiency filters on diesel-powered equipment to trap diesel particles before they enter the mine atmosphere. Following 18 months of education and technical assistance by MSHA after the rule is issued, filters would first have to be installed on permissible diesel-powered equipment. By the end of the following year (i.e., 30 months after the rule is issued), such filters would also have to be installed on any heavy-duty outby equipment. No specific concentration limit would be established in this sector; the proposed rule would require that filters be installed and properly maintained. Miner awareness training on the hazards of dpm would also be required.

With this notice, MSHA is proposing to adopt a different rule to achieve this goal in underground metal and nonmetal mines. MSHA is proposing that a limit on the concentration of dpm to which miners may be exposed would be established for underground metal and nonmetal mines. The limit would restrict dpm concentrations in underground metal and nonmetal mines to about 200 micrograms per cubic meter of air. Operators would be able to select whatever combination of engineering and work practice controls they want to keep the dpm concentration in the mine below this limit. The concentration limit would be implemented in two stages: an interim limit that would go into effect following 18 months of education and technical assistance by MSHA, and a final limit after 5 years. MSHA sampling would be used to determine compliance. The proposal for this sector would also require that all underground metal and nonmetal mines using diesel-powered equipment observe a set of ''best practices'' to reduce engine emissions—e.g., to use low-sulfur fuel. Similar practices are already in effect in underground coal mines as a result of MSHA's 1996 diesel equipment rule.

MSHA is not at this time proposing a rule applicable to surface mines. As illustrated in Figure I–1, in certain situations the concentrations of dpm at surface mines may exceed those to which rail, trucking and dock workers are exposed. Problem areas identified in this sector include production areas where miners work in the open air in close proximity to loader-haulers and trucks powered by older, out-of-tune diesel engines, or other confined spaces where diesel engines are running. The Agency believes, however, that these problems are currently limited and readily controlled through education and technical assistance. Using tailpipe exhaust extenders, or directing the exhaust across the engine fan, can dilute the high concentrations of dpm that might otherwise occur in areas immediately adjacent to mining equipment. Surface mine operators using or planning to switch to environmentally conditioned cabs to reduce noise exposure to equipment operators might also be able to incorporate filtration features that would protect these miners from high dpm concentrations as well. Completing already planned purchases of new trucks containing cleaner engines may also help reduce the isolated instances of high dpm concentrations at such mines.

The Agency would like to emphasize, however, that surface miners are entitled to the same level of protection as other miners, and that the Agency's risk assessment indicates that even short-term exposures to concentrations of dpm like those observed may result in serious health problems. Accordingly, in addition to providing education and technical assistance to surface mines, the Agency will also continue to evaluate the hazards of diesel particulate exposure at surface mines and will take any necessary action, including regulatory action if warranted, to help the mining community minimize any hazards.

(2) How Is This Notice of Proposed Rulemaking Organized? What Portions Do I Need To Read If I have Already Reviewed MSHA's Notice of Proposed Rulemaking To Limit dpm in Underground Coal Mines?

The proposed rule for underground metal and nonmetal mines can be found at the end of this Notice. The remainder of this preamble to the proposed rule (**SUPPLEMENTARY INFORMATION**) describes the Agency's rationale for what is being proposed.

Part I consists of a series of ''Questions and Answers.'' The Agency hopes they will provide most of the information you will need to formulate your comments. The first ten of these Questions and Answers (Section A) provide a general overview of this rulemaking. This is followed (Section B) by twenty additional Questions and Answers that address specific provisions of the proposed rule.

Part II provides some background information on nine topics that are relevant to this rulemaking. In order, the topics covered are: (1) The role of diesel-powered equipment in mining; (2) the composition of diesel exhaust and diesel particulate; (3) measurement of diesel particulate; (4) reducing soot at the source—EPA regulation of diesel engine design;(5) limiting the public's exposure to soot—EPA ambient air quality standards; (6) controlling diesel particulate emissions in mining—a toolbox; (7) existing mining standards that limit miner exposure to occupational diesel particulate emissions; (8) how other jurisdictions are restricting occupational exposure to diesel soot; and (9) MSHA's initiative to limit miner exposure to diesel particulate—the history of this rulemaking and related actions. Part II of this preamble is virtually identical to its counterpart in the preamble to MSHA's proposed rule to limit dpm concentrations in underground coal mines; the only exception is that the very last paragraph here, on the history of dpm rulemaking, has been updated to reflect the issuance of the proposed rule on underground coal. Appended to the end of this document, is an MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox,'' includes additional information on methods for controlling dpm, and a glossary of terms.

Part III is the Agency's risk assessment. The first section presents the Agency's data on current dpm exposure levels in each sector of the mining industry. The second section reviews the scientific evidence on the risks associated with exposure to dpm. The third section evaluates this evidence in light of the Mine Act's statutory criteria. Part III of this preamble is virtually identical to its counterpart in the preamble to MSHA's proposed rule to limit dpm concentrations in underground coal mines; the only exception is the language in Section III.3.c., reflecting the fact that the proposed rules are different for each sector, and hence had to be evaluated separately as to whether they satisfy the requirements of the law.

Part IV is a detailed section-by-section explanation and discussion of the elements of the proposed rule.

Part V is an analysis of whether the proposed rule meets the Agency's statutory obligation to attain the highest degree of safety or health protection for miners, with feasibility a consideration. This part begins with a review of the law and a profile of the industry's economic position. The next part explores the extent to which the proposed rule is expected to impact existing concentration levels, reviews significant alternatives that might provide more protection than the rule being proposed but which have not been adopted by the Agency due to feasibility concerns, and then discusses the

feasibility of the rule being proposed. Part V draws upon a computer simulation of how the proposed rule in underground metal and nonmetal mines is expected to impact dpm concentrations; accordingly, an Appendix to this discussion provides information about the simulation methodology. The simulation method, which can be performed using a standard spreadsheet program, can be used to model conditions and control impacts in any underground mine; copies of this model are available to the mining community from MSHA.

Part VI reviews several impact analyses which the Agency is required to provide in connection with a proposed rulemaking. This information summarizes a more complete discussion that can be found in the Agency's Preliminary Regulatory Economic Analysis (PREA). Copies of this document are available from the Agency and will be posted on the MSHA Web site (http://www.msha.gov).

Part VII is a complete list of publications referenced by the Agency in the preamble.

(3) What Evidence Does MSHA Have That Current Underground Concentrations of DPM Need To Be Controlled?

The best available evidence MSHA has at this time is that miners subjected to an occupational lifetime of dpm exposure at concentrations we presently find in underground mines face a significant risk of material impairment to their health.

It has been recognized for some time that miners working in close contact with diesel emissions can suffer acute reactions—e.g., eye, nose and throat irritations—but questions have persisted as to what component of the emissions was causing these problems, whether exposure increased the risk of other adverse health effects, and the level of exposure creating health consequences.

In recent years, there has been growing evidence that it is the very small respirable particles in diesel exhaust (dpm) that trigger a variety of adverse health outcomes. These particles are generally less than one-millionth of a meter in diameter (submicron), and so can readily penetrate into the deepest recesses of the lung. They consist of a core of the element carbon, with up to 1,800 different organic compounds adsorbed onto the core, and some sulfates as well. (A diagram of dpm can be found in Part II of this preamble—see Figure II–3). The physiological mechanism by which dpm triggers particular health outcomes is not yet known. One or more of the organic substances adsorbed onto the surface of the core of the particles may be responsible for some health effects, since these include many known or suspected mutagens and carcinogens. But some or all of the health effects might also be triggered by the physical properties of these tiny particles, since some of the health effects are observed with high exposures to any ''fine particulate,'' whether the particle comes from diesel exhaust or another source.

There is clear evidence that exposure to high concentrations of dpm can result in a variety of serious health effects. These health effects include: (i) Sensory irritations and respiratory symptoms serious enough to distract or disable miners; (ii) death from cardiovascular, cardiopulmonary, or respiratory causes; and (iii) lung cancer.

By way of example of the non-cancer effects, there is evidence that workers exposed to diesel exhaust during a single shift suffer material impairment of lung capacity. A control group of unexposed workers showed no such impairment, and workers exposed to filtered diesel exhaust (i.e., exhaust from which much of the dpm has been removed) experienced, on average, only about half as much impairment. Moreover, there are a number of studies quantifying significant adverse health effects—as measured by lost work days, hospitalization and increased mortality rates—suffered by the general public when exposed to concentrations of fine particulate matter like dpm far lower than concentrations to which some miners are exposed. The evidence from these fine particulate studies was the basis for recent rulemaking by the Environmental Protection Agency to further restrict the exposure of the general public to fine particulates, and the evidence was given very widespread and close scrutiny before that action was made final. Of particular interest to the mining community is that these fine particulate studies indicate that those who have pre-existing pulmonary problems are particularly at risk. Many individual miners in fact have such pulmonary problems, and the mining population as a whole is known to have such conditions at a higher rate than the general public.

Although no epidemiological study is flawless, numerous epidemiological studies have shown that long term exposure to diesel exhaust in a variety of occupational circumstances is associated with an increased risk of lung cancer. With only rare exceptions, involving relatively few workers and/or observation periods too short to reliably detect excess cancer risk, the human studies have consistently shown a greater risk of lung cancer among workers exposed to dpm than among comparable unexposed workers. When results from the human studies are combined, the risk is estimated to be 30–40 percent greater among exposed workers, if all other factors (such as smoking habits) are held constant. The consistency of the human study results, supported by experimental data establishing the plausibility of a causal connection, provides strong evidence that chronic dpm exposure at high levels significantly increases the risk of lung cancer in humans.

Moreover, all of the human occupational studies indicating an increased frequency of lung cancer among workers exposed to dpm involved average exposure levels estimated to be far below the levels observed in underground mines—and even below the limits being proposed. As noted in Part III, MSHA views extrapolations from animal experiments as subordinate to results obtained from human studies. However, it is noteworthy that dpm exposure levels recorded in some underground mines have been within the exposure range that produced tumors in rats.

Based on the scientific data available in 1988, the National Institute for Occupational Safety and Health (NIOSH) identified dpm as a probable or potential human carcinogen and recommended that it be controlled. Other organizations have made similar recommendations.

MSHA carefully evaluated all the evidence available in light of the requirements of the Mine Act. Based on this evaluation, MSHA has reached several conclusions:

(1) The best available evidence is that the health effects associated with exposure to dpm can materially impair miner health or functional capacity.

(2) At levels of exposure currently observed in underground mining, many miners are presently at significant risk of incurring these material impairments over a working lifetime.

(3) The reduction in dpm exposures that is expected to result from implementation of the proposed rule for underground metal and nonmetal mines would substantially reduce the significant risks currently faced by underground metal and nonmetal miners exposed to dpm.

MSHA had its risk assessment independently peer reviewed. The risk assessment presented here incorporates revisions made in accordance with the reviewers' recommendations. The reviewers stated that:

* * * principles for identifying evidence and characterizing risk are thoughtfully set

out. The scope of the document is carefully described, addressing potential concerns about the scope of coverage. Reference citations are adequate and up to date. The document is written in a balanced fashion, addressing uncertainties and asking for additional information and comments as appropriate. (Samet and Burke, Nov. 1997.)

The proposed rule would reduce the concentration of one type of fine particulate in underground metal and nonmetal mines—that from diesel emissions—but would not explicitly control miner exposure to other fine airborne particulates present underground. In light of the evidence presented in the Agency's risk assessment on the risks that fine particulates in general may pose to the mining population, MSHA would welcome comments as to whether the Agency should also consider restricting the exposure of underground metal and nonmetal miners to all fine particulates, regardless of the source.

(4) Aren't NIOSH and the NCI Working on a Study That Will Provide Critical Information? Why Proceed Before the Evidence Is Complete?

NIOSH and the National Cancer Institute (NCI) are collaborating on a cancer mortality study that will provide additional information about the relationship between dpm exposure levels and disease outcomes, and about which components of dpm may be responsible for the observed health effects. The study is projected to take about seven years. The protocol for the study was recently finalized.

The information the study is expected to generate will be a valuable addition to the scientific evidence on this topic. But given its conclusions about currently available evidence, MSHA believes the Agency needs to take action now to protect miners' health. Moreover, as noted by the Supreme Court in an important case on risk involving the Occupational Safety and Health Administration, the need to evaluate risk does not mean an agency is placed into a ''mathematical straightjacket.'' *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct. 2844 (1980). The Court noted that when regulating on the edge of scientific knowledge, absolute scientific certainty may not be possible, and ''so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection.'' (*Id.* at 656.) This advice has special significance for the mining community, because a singular historical factor behind the enactment of the current Mine Act was the slowness in coming to grips with the harmful effects of other respirable dust (coal dust).

It is worth noting that while the cohort selected for the NIOSH/NCI study consists of underground miners (specifically, underground metal and nonmetal miners), this choice is in no way linked to MSHA's regulatory framework or to miners in particular. This cohort was selected for the study because it provides the best population for scientists to study. For example, one part of the study would compare the health experiences of miners who have worked underground in mines with long histories of diesel use with the health experiences of similar miners who work in surface areas where exposure is significantly lower. Since the general health of these two groups is very similar, this will help researchers to quantify the impacts of diesel exposure. No other population is as easy to study for this purpose. But as with any such epidemiological study, the insights gained are not limited to the specific population used in the study. Rather, the study will provide information about the relationship between exposure and health effects that will be useful in assessing the risks to any group of workers in a dieselized industry.

(5) What Are the Impacts of the Proposed Rule?

Costs. Table I–1 provides cost information. Some explanation is necessary.

Costs consist of two components: ''initial'' costs (e.g., capital costs for equipment, or the one-time costs of developing a procedure), which are then amortized over a period of years in accordance with a standardized formula to provide an ''annualized'' cost; and ''annual'' costs that occur every year (e.g., maintenance or training costs). Adding together the ''annualized'' initial costs and the ''annual'' costs provides the per year costs for the rule.

It should be noted that in amortizing the initial costs, a net present value factor was applied to certain costs: those associated with provisions where mine operators do not have to make capital expenditures until some period of time after the effective date. Detailed information on this point is contained in the Agency's Preliminary Regulatory Economic Analysis (PREA), as are the Agency's cost assumptions.

The costs per year to the underground metal and nonmetal industry are about $19.2 million. These costs are higher than the costs for the proposed rule for underground coal mines, reflecting the much more intense use of diesel-powered equipment in this sector. The Agency spent considerable time developing its cost assumptions and estimates, which are spelled out in detail in the Agency's PREA. Assumptions are based upon information provided by MSHA technical personnel, who have had discussions with manufacturers of engines and mining equipment, and from journals and reports published by independent organizations that collect data about the mining industry. The Agency would encourage the mining community to provide detailed comments in this regard so as to ensure these cost assumptions and estimates are as accurate as possible. With respect to the largest cost item—the cost to meet the proposed concentration limit in underground metal and nonmetal mines—MSHA assumed that engineering controls, such as low emission engines, ceramic filters, oxidation catalytic converters, and cabs would be needed on diesel powered equipment. Most of the engineering controls would be needed on diesel equipment used for production, while a small amount of diesel equipment that is used for support purposes would need engineering controls. In addition to these controls, MSHA assumed that some underground metal and nonmetal mines would need to make ventilation changes in order to meet the proposed concentration limits.

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Table I–1.—Compliance Cost for Underground Metal and Nonmetal Mine Operators

(Dollars X 1,000)

	Large Mines (≥20)			Small Mines (<20)			Total Mines		
Detail	(A) Total [Col.B+C]	(B) Annual-ized	(C) Annual	(D) Total [Col.E+F]	(E) Annual-ized	(F) Annual	(G) Total [Col.H+I]	(H) Annual-ized	**(I) Annual**
57.5060(a)	$8,369	$8,369	$0	$2,677	$2,677	$0	$11,046	$11,046	$0
57.5060(b)	$4,910	$4,910	$0	$1,627	$1,627	$0	$6,537	$6,537	$0
57.5060(c)	$10	$10	$0	$2	$2	$0	$12	$12	$0
57.5062	$5	$0	$5	$1	$0	$1	$6	$0	$6
57.5066	$30	$25	$5	$8	$6	$2	$38	$31	$7
57.5067	$731	$731	$0	$121	$121	$0	$852	$852	$0
57.5070	$198	$0	$198	$5	$0	$5	$203	$0	$203
57.5071	$364	$25	$339	$122	$0	$122	$486	$25	$461
57.5075	$3	$0	$3	$1	$0	$1	$4	$0	$4
Total	$14,620	$14,070	$550	$4,564	$4,433	$131	$19,184	$18,503	$681

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As required by the Regulatory Flexibility Act, MSHA has performed a review of the effects of the proposed rule on ''small entities''. The results—including information about the average cost for mines in each sector with less than 500 employees and mines in each sector with less than 20 miners—are summarized in response to Question 7.

Paperwork. Tables I–2 and I–3 show additional paperwork burden hours which the proposed rule would require. Only those existing or proposed regulatory requirements which would, as a result of this rulemaking, result in new burden hours, are noted. The costs for these paperwork burdens, a subset of the overall costs of the proposed rule, are specifically noted in Part VII of the Agency's PREA. Table I–2 shows the burden hours for large and small mines—those with less than 20 miners.

TABLE I–2.—UNDERGROUND METAL AND NONMETAL MINE BURDEN HOURS

Detail	Large	Small	Total
57.5060	306	123	429
57.5062	49	11	60
57.5066	207	76	283
57.5070	136	6	142
57.5071	2,600	213	2,813
57.5075	131	7	138
Total	3,429	436	3,865

Table I–3 shows the additional burden hours for diesel engine manufacturers. The compliance costs related to diesel equipment manufacturers are assumed to be passed through to underground metal and nonmetal operators as explained in the PREA. Thus, diesel equipment manufacturers are not estimated to incur any direct cost as a result of this rule.

TABLE I–3.—DIESEL ENGINE MANUFACTURERS BURDEN HOURS

Detail	Total
Part 7, Subpart E	36
Total	36

Benefits. The proposed rule would reduce the exposure of underground metal and nonmetal miners to dpm, thereby reducing the risk of adverse health effects and their concomitant effects.

The risks being addressed by this rulemaking arise because some miners are exposed to high concentrations of the very small particles produced by engines that burn diesel fuel. As discussed in Part II of the preamble, diesel powered engines are used increasingly in underground mining operations because they permit the use of mobile equipment and provide a full range of power for both heavy-duty and light-duty operations (i.e., for production equipment and support equipment, respectively), while avoiding the explosive hazards associated with gasoline. But underground mines are confined spaces which, despite ventilation requirements, tend to accumulate significant concentrations of particles and gases—both those produced by the mine itself (e.g., methane gas and silica dust liberated by mining operations) and those produced by equipment used in the mine.

As discussed in MSHA's risk assessment (Part III of this preamble), the concentrations of diesel particulates to which some underground miners are currently exposed are significantly higher than the concentrations reported for other occupations involving the use of dieselized equipment; and at such concentrations, exposure to dpm by underground miners over a working lifetime is associated with an excess risk of a variety of adverse health effects.

The nature of the adverse health effects associated with such exposures suggests the nature of the savings to be derived from controlling exposure. Acute reactions can result in lost production time for the operator and lost pay (and perhaps medical expenses) for the worker. Hospital care for acute breathing crises or cancer treatment can be expensive, result in lost income for the worker, lost income for family members who need to provide care and lost productivity for their employers, and may well involve government payments (e.g., Social Security disability and Medicare). Serious illness and death lead to long term income losses for the families involved, with the potential for costs from both employers (e.g., workers' compensation payouts, pension payouts) and society as a whole (e.g., government assisted aid programs).

The information available to the Agency suggests that as exposure is reduced, so are the adverse health consequences. For example, data collected on the effects of environmental exposure to fine particulates suggest that reducing occupational dpm exposures by as little as 75 μg/m^3 (roughly corresponding to a reduction of 25 μg/m^3 in 24-hour ambient atmospheric concentration) could lead to significant reductions in the risk of various acute responses, including mortality. And chronic occupational exposure has been linked to an estimated 30 to 40 percent increase in the risk of lung cancer. All the quantitative risk models reviewed by NIOSH suggest excess risks of lung cancer of more than one per thousand for miners who have long-term occupational exposures to dpm concentrations in excess of 1000 μg/m^3, and the epidemiologically-based risk estimates suggest higher risks. The Agency's estimate is that implementation of the proposed rule would avoid 28 lung cancers per 1,000 affected miners, or approximately 7 lung cancer cases a year over an initial 65-year period.[2] Note that because lung cancer associated with diesel particulate matter typically arises from cumulative exposure and after some latency period, these health benefits-in terms of the reduced incidence of lung cancer illness and subsequent death-will not materialize until some years after passage of the proposed rule.

The yearly reduction in excess lung cancer deaths due to reduced exposure to diesel particulate matter may occur gradually, depending on the historical cumulative exposure to diesel particulate matter among the veteran workforce. Since the average latency period for lung cancer is 20 years, the full benefit associated with a concentration limit of 200 μg/m^3 may not be seen before then.

Despite these quantitative indications, quantification of the benefits is difficult. Although increased risk of lung cancer has been shown to be associated with dpm exposure among exposed workers, a conclusive dose-response relationship upon which to base quantification of benefits has not been demonstrated. The Agency nevertheless intends, to the extent it can, to develop an appropriate analysis quantifying benefits in connection with the final rule.

The Agency does not have much experience in quantifying benefits in the case of a proposed health standard (other than its recent proposal on controlling mining noise, where years of compliance data and hearing loss studies provide a much more complete quantitative picture than with dpm). MSHA therefore welcomes suggestions for the appropriate approach to use to quantify the benefits likely to be derived from this rulemaking. Please identify scientific studies, models, and/or assumptions suitable for estimating risk at different exposure levels, and data on numbers of miners exposed to different levels of dpm.

[2] In the long run, the average approaches 464÷45=10 lung cancers avoided per year as the number of years considered increases beyond 65.

(6) Did MSHA Actively Consider Alternatives to What Is Being Proposed?

Yes. Once MSHA determined that the evidence of risk required a regulatory action, the Agency considered a number of alternative approaches, the most significant of which are reviewed in Part V of the preamble.

The consideration of options proceeded in accordance with the requirements of Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (the ''Mine Act''). In promulgating standards addressing toxic materials or harmful physical agents, the Secretary must promulgate standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health over his/her working lifetime. In addition, the Mine Act requires that the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, consider other factors, such as the latest scientific data in the field, the feasibility of the standard and experience gained under the Mine Act and other health and safety laws. Thus, the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, based on the ''best available evidence,'' with feasibility a consideration.

As a result, MSHA seriously considered a number of alternatives that would, if adopted as part of the proposed rule, have provided increased protection—and would also have significantly increased costs. For example, the Agency considered proposing a more stringent concentration limit for dpm in underground metal and nonmetal mines, or shortening the time frame to achieve compliance with that limit. But as discussed in more detail in Part V, MSHA concluded, however, that such an approach may not be feasible for the underground sector at this time. Options considered by the Agency included: requiring the installation of a particulate filter on every new piece of diesel-powered equipment added to the fleet of an underground metal or nonmetal mine regardless of the dpm concentration level, as an added layer of miner protection; establishing a fixed schedule for operator monitoring of the concentration of diesel particulate emissions; and requiring control plans be preapproved by MSHA before implementation to ensure their effectiveness had been verified. These approaches were not included in the proposal because MSHA concluded that less stringent alternatives could achieve the same level of protection with less adverse impact.

MSHA also considered alternatives that would have led to a significantly lower-cost proposal, e.g., establishing a less stringent concentration limit in underground metal and nonmetal mines, or increasing the time for mine operators to come into compliance. However, based on the current record, MSHA has tentatively concluded that such approaches would not be as protective as those being proposed, and that the approach proposed is both economically and technologically feasible. As a result, the Agency has not proposed to adopt these alternatives.

MSHA also explored whether to permit the use of administrative controls (e.g., rotation of personnel) and personal protective equipment (e.g., respirators) to reduce the diesel particulate exposure of miners. It is generally accepted industrial hygiene practice, however, to eliminate or minimize hazards at the source before resorting to personal protective equipment. Moreover, such a practice is generally not considered acceptable in the case of carcinogens since it merely places more workers at risk. Accordingly, the proposal explicitly prohibits the use of such approaches, except in those limited cases where MSHA approves, due to technological constraints, a 2-year extension for an underground metal and nonmetal mine on the time to comply with the final concentration limit.

MSHA did make a concerted effort to design the requirements of the proposal to minimize unnecessary burdens. Each element of the proposal was independently reviewed to ascertain whether it was really needed, as were all the paperwork requirements, and each was designed with cost-effectiveness in mind. Training and operator sampling requirements, for example, were specifically designed to be performance-oriented to minimize costs, while at the same time crafted to ensure that each operator's activities provide necessary protections.

The Agency considered requiring the underground metal and nonmetal sector to use work practice and engine controls exactly like those already applicable in the underground coal sector as a result of MSHA's diesel equipment rule (62 FR 55412). Such an alternative would have required each metal and nonmetal operator: (a) to conduct weekly emissions tests of diesel-powered equipment in underground metal and nonmetal mines instead of just tagging suspect equipment for prompt inspection; (b) to establish training programs for maintenance personnel; and (c) to turn over the mine's diesel fleet within a few years so as to have only approved engines. The agency concluded, however, that the conditions which warrant such an approach in underground coal mines had not been established for metal and nonmetal mines; and that with respect to the risks created by dpm, the approach taken in the proposed rule could provide adequate protection in a cost-effective manner.

The agency hopes that comments and suggestions from the mining community on the proposed rule will help it identify further improvements in this regard.

(7) What Will the Impact Be on the Smallest Underground Metal and Nonmetal Mines? What Consideration Did MSHA Give to Alternatives for the Smallest Mines?

The Regulatory Flexibility Act requires MSHA and other regulatory agencies to conduct a review of the effects of proposed rules on small entities. That review is summarized here; a copy of the full review is included in Part VI of this preamble, and in the Agency's PREA. The Agency encourages the mining community to provide comments on this analysis.

The Small Business Administration generally considers a small mining entity to be one with less than 500 employees. MSHA has traditionally defined a small mine to be one with less than 20 miners, and has focused special attention on the problems experienced by such mines in implementing safety and health rules, e.g., the Small Mine Summit, held in 1996. Accordingly, MSHA has separately analyzed the impact of the proposed rule on mines with 500 employees or less, and those with less than 20 miners.

Table I–4 summarizes MSHA's estimates of the average costs of the proposed rule to a small underground metal and nonmetal mine.

TABLE I–4.—AVERAGE COST PER SMALL UNDERGROUND METAL AND NONMETAL MINE

Size	UG M/NM <500	UG M/NM <20
Cost per mine ...	$87,800	$56,100

Pursuant to the Regulatory Flexibility Act, MSHA must determine whether the costs of the proposed rule constitute a ''significant impact on a substantial number of small entities.'' Pursuant to the Regulatory Flexibility Act, if an Agency determines that a proposed rule

does not have such an impact, it must publish a ''certification'' to that effect. In such a case, no additional analysis is required (5 U.S.C. § 605).

In evaluating whether certification is appropriate, MSHA utilized an impact analysis comparing the costs of the proposal to the revenues of the sector involved (only the revenues for underground metal and nonmetal mines are used in this calculation).

The Agency has, as required by law (5 U.S.C. § 603), developed an initial regulatory flexibility analysis which is set forth in Part VI of this preamble (and the Agency's PREA). In addition to a succinct statement of the objects of the proposed rule and other information required by the Regulatory Flexibility Act, the analysis reviews alternatives considered by the Agency with an eye toward the nature of small business entities. MSHA welcomes comment on this analysis, on possible impacts of the proposed rule on small mines, and suggestions to ameliorate those impacts.

In promulgating standards, MSHA does not reduce protection for miners employed at small mines. But MSHA does consider the impact of its standards on even the smallest mines when it evaluates the feasibility of various alternatives. For example, a major reason why MSHA concluded it needed to stagger the effective dates of some of the requirements in the proposed rule is to ensure that it would be feasible for the smallest mines to have adequate time to come into compliance.

Consistent with recent amendments to the Regulatory Flexibility Act under SBREFA (the Small Business Regulatory Enforcement Fairness Act), MSHA has already started considering actions it can take to minimize the anticipated compliance burdens of this proposed rule on smaller mines. For example, no limit on dpm concentration would be in effect in underground metal and nonmetal mines for 18 months—and during that time, the Agency plans to provide extensive compliance assistance to the mining community. The metal and nonmetal community would also have an additional three and a half years to comply with the final concentration limit, which in many cases means these mines may have a full five years of technical assistance before any engineering controls are required. MSHA would focus its efforts on smaller operators in particular—to training them in measuring dpm concentrations, and providing technical assistance on available controls. The Agency will also issue a compliance guide, and continue its current efforts to disseminate educational materials and software. Comment is invited on whether compliance workshops or other such approaches would be valuable.

(8) Why Would the Proposed Rule Require Special Training for Underground Miners Exposed to Diesel Exhaust? And Why Does the Proposed Rule not Address Medical Surveillance and Medical Removal Protection for Affected Miners?

Training. Diesel particulate exposure has been linked to a number of serious health hazards, and the Agency's risk assessment indicates that the risks should be reduced as much as feasible. It has been the experience of the mining community that miners must be active and committed partners along with government and industry in successfully reducing these risks. Therefore, training miners as to workplace risks is a key component of mine safety and health programs. This rulemaking continues that approach.

Specifically, pursuant to proposed § 57.5070(a), any underground miner ''who can reasonably be expected to be exposed to diesel emissions'' would have to receive instruction in: (1) The health risks associated with dpm exposure; (2) in the methods used in the mine to control diesel particulate concentrations; (3) in identification of the personnel responsible for maintaining those controls; and (4) in actions miners must take to ensure the controls operate as intended. The training is to be provided annually in all mines using diesel-powered equipment, and is to be provided without charge to the miner.

MSHA does not expect this training to be a significant new burden for mine operators. The training required can be provided at minimal cost and with minimal disruption. The proposal would not require any special qualifications for instructors, nor would it specify the minimum hours of instruction. The purpose of the proposed requirement is miner awareness, and MSHA believes this can be accomplished by operators in a variety of ways. In mines that have regular safety meetings before the shift begins, devoting one of those meetings to the topic of diesel particulate would probably be a very easy way to convey the necessary information. Mines not having such a regular meeting can schedule a ''toolbox'' talk for this purpose. MSHA will be developing an outline of educational material that can be used in these settings. Simply providing miners with a copy of MSHA's toolbox, and reviewing how to use it, can cover several of the training requirements.

Operators may choose to include required dpm training under Part 48 training as an additional topic. Part 48 training plans, however, must be approved. There is no existing requirement that Part 48 training include a discussion of the hazards and control of diesel emissions. While mine operators are free to cover additional topics during the Part 48 training sessions, the topics that must be covered during the required time frame may make it impracticable to cover other matters within the prescribed time limits. Where the time is available in mines using diesel-powered equipment, operators should be free to include the dpm instruction in their proposed Part 48 training plans. The Agency does not believe special language in the proposed rule is needed to permit this action under Part 48, but welcomes comment in this regard.

The proposal would not require the mine operator to separately certify the completion of the diesel particulate training, but some evidence that the training took place would have to be produced upon request. A serial log with the employee's signature is a perfectly acceptable practice in this regard.

Medical surveillance. Another important source of information that miners and operators can use to protect health can come from medical surveillance programs. Such programs provide for medical evaluations or tests of miners exposed to particularly hazardous substances, at the operator's expense, so that a miner exhibiting symptoms or adverse test results can receive timely medical attention, ensure that personal exposure is reduced as appropriate and controls are reevaluated. Sometimes, to ensure that this source of information is effective, medical removal (transfer) protection must also be required. Medical transfer may address protection of a miner's employment, a miner's pay retention, a miner's compensation, and a miner's right to opt for medical removal.

As a general rule, medical surveillance programs have been considered appropriate when the exposures are to potential carcinogens. MSHA has in fact been considering a generic requirement for medical surveillance as part of its air quality standards rulemaking. MSHA also recently proposed a medical surveillance program for hearing, as part of the Agency's proposed rule on noise exposure (61 FR 66348).

MSHA is not proposing such a program for dpm at this time because it is still gathering information on this issue. The Agency, however, welcomes

comments regarding this issue and also, on medical removal.

Specifically, the Agency would welcome comment on the following questions: (a) What kinds of examinations or tests would be appropriate to detect whether miners are suffering ill effects as a result of dpm exposure; (b) the qualifications of those who would have to perform such examinations or tests and their availability; (c) whether such examinations or tests need to be provided and how frequently once the provisions of the rule are in effect; and (d) whether medical removal protections should be a component of a medical surveillance program.

(9) What Are the Major Issues on Which MSHA Wants Comments? What If I Already Submitted Comments on the Same Point on the Proposed Rule for the Underground Coal Sector?

MSHA wants the benefit of your experience and expertise: whether as a miner or mine operator in any mining sector; a manufacturer of diesel-powered engines, equipment, or emission control devices; or as a scientist, doctor, engineer, or safety and health professional. MSHA intends to review and consider all comments submitted to the Agency.

While MSHA will endeavor to consider relevant comments on the proposed rule for underground coal mines in evaluating what to do in the underground metal and nonmetal sector (e.g., comments on risk, the effectiveness of filtration devices, etc.), the record established for each rulemaking is separate. Accordingly, the Agency encourages those who are interested in both rulemakings to submit separate or duplicate comments for each.

The following list identifies some topics on which the Agency would particularly like information; requests for information on other topics can be found throughout the preamble.

(a) *Assessment of Risk/Benefits of the Rule.* Part III of this preamble reviews information that the Agency has been able to obtain to date on the risks of dpm exposure to miners. The Agency welcomes your comments on the significance of the material already in the record, and any information that can supplement the record. For example, additional information on existing and projected exposures to dpm and to other fine particulates in various mining environments would be useful in getting a more complete picture of the situation in various parts of the mining industry. Additional information on the health risks associated with exposure to dpm—especially observations by trained observers or studies of acute or chronic effects of exposure to known levels of dpm or fine particles in general, information about pre-existing health conditions in individual miners or miners as a group that might affect their reactions to exposures to dpm or other fine particles, and information about how dpm affects human health—would help provide a more complete picture of the relationship between current exposures and the risk of health outcomes. Information on the costs to miners, their families and their employers of the various health problems linked to dpm exposure, and the prevalence thereof, would help provide a more complete picture of the benefits to be expected from reducing exposure. And as discussed in response to Question and Answer 5, the Agency would welcome advice about the assumptions and approach to use in quantifying the benefits to be derived from this rule.

(b) *Proposed rule.* Part IV of this preamble reviews each provision of the proposed rule, Part V discusses the economic and technological feasibility of the proposed rule, and Part VI reviews the projected impacts of the proposed rule. MSHA would welcome comments on each of these topics.

The Agency would like your thoughts on the specific alternative approaches discussed in Part V. The options discussed include: adjusting the concentration limit for dpm; adjusting the phase-in time for the concentration limit; and requiring that specific technology be used in lieu of establishing a concentration limit.

The Agency would also like your thoughts on more specific changes to the proposed rule that should be considered. For example, for underground metal and nonmetal mines, MSHA is proposing to measure the amount of total carbon to measure dpm concentrations. MSHA welcomes information relevant to this proposal. The Agency is also interested in obtaining as many examples as possible as to the specific situation in individual mines: the composition of the diesel fleet, what controls cannot be utilized due to special conditions, and any studies of alternative controls using the computer spreadsheet described in the Appendix to Part V of this preamble. (See Adequacy of Protection and the Feasibility of the Proposed Rule). Information about the availability and costs of various control technologies that are being developed (e.g., high-efficiency ceramic filters), experience with the use of available controls, and information that will help the Agency evaluate alternative approaches for underground metal and nonmetal mines would be most welcome. Comments from the underground coal sector on the implementation to date of diesel work practices (like the rule limiting idling, and the training of those who provide maintenance) would be helpful in evaluating related proposals for the underground metal and nonmetal sector. The Agency would appreciate information about any unusual situations that might warrant the application of special provisions.

(c) *Compliance Guidance.* The Agency welcomes comments on any topics on which initial guidance ought to be provided as well as any alternative practices which MSHA should accept for compliance before various provisions of the rule go into effect.

(d) *Minimizing Adverse Impact of the Proposed Rule.* The Agency has set forth its assumptions about impacts (e.g., costs, paperwork, and impact on smaller mines in particular) in some detail in this preamble and in the PREA, and would welcome comments on the methodology. Information on current operator equipment replacement planning cycles, tax, State requirements, or other information that might be relevant to purchasing new engines or control technology would likewise be helpful. The Agency would also welcome comments on the financial situation of the underground metal and nonmetal sector, including information that may be relevant to only certain commodities.

(10) When Will the Rule Become Effective? Will MSHA Provide Adequate Guidance Before Implementing the Rule?

Some requirements of the proposed rule would go into effect 60 days after the date of promulgation: the requirement to provide basic hazard training to miners who are exposed underground to dpm, the ''best practice'' requirements (e.g., the requirement to use only low-sulfur fuel), and some related recordkeeping requirements.

The next requirements would go into effect 18 months after the date the rule is promulgated. Underground metal and nonmetal mines would have to comply with an interim dpm concentration limit.

Finally, five years after the date the rule is promulgated, all underground metal and nonmetal mines would have to comply with a final dpm concentration limit.

MSHA intends to provide considerable technical assistance and guidance to the mining community before the various requirements go into

effect, and be sure MSHA personnel are fully trained in the requirements of the rule. A number of actions have already been taken toward this end. The Agency held workshops on this topic in 1995 which provided the mining community an opportunity to share advice on how to control dpm concentrations. The Agency has published a ''toolbox'' of methods available to mining operators to achieve reductions in dpm concentration (appended to the end of this document is a copy of an MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox,'' which includes additional information on methods for controlling dpm, and a glossary of terms). In addition, MSHA has developed a computer spreadsheet template which allows an operator to model the application of alternative engineering controls to reduce dpm. The design of the model, and several specific mine profiles developed illustrating its use, are discussed in part V of the preamble.

The Agency is committed to issuing a compliance guide for mine operators providing additional advice on implementing the rule. MSHA would welcome suggestions on matters that should be discussed in such a guide. MSHA would also welcome comments on other actions it could take to facilitate implementation, and in particular whether a series of additional workshops would be useful.

(B) Additional Information About the Proposed Rule for Underground Metal and Nonmetal Mines

(11) What Basic Changes Does the Proposal Make to Part 57, the Health Rules for Underground Metal and Nonmetal Mines?

What follows is a general overview of the changes proposed to Part 57. The remainder of this part is devoted to addressing the details of the proposed rule in this sector.

The first thing the proposal would do is require underground metal and nonmetal mines to observe a set of ''best practices'' to reduce engine emissions of dpm underground. Only low-sulfur diesel fuel and EPA-approved fuel additives would be permitted to be used in diesel-powered equipment in underground areas. Idling of such equipment that is not required for normal mining operations would be prohibited. In addition, diesel engines would have to be maintained in good order to ensure that deterioration does not lead to emissions increases—approved engines would have to be maintained in approved condition; the emission related components of non-approved engines would have to be maintained in accordance with manufacturer specifications; and any installed emission device would have to be maintained in effective operating condition. Equipment operators in underground metal and nonmetal mines would be authorized to tag equipment with potential emissions-related problems, and tagged equipment would have to be ''promptly'' referred for a maintenance check. As an additional safeguard in this regard, maintenance to ensure compliance with these requirements would have to be done by persons qualified by virtue of training or experience to perform the maintenance.

The proposed rule would also require that, with the exception of diesel engines used in ambulances and fire-fighting equipment, any diesel engines added to the fleet of an underground metal or nonmetal mine after the rule's promulgation must be an engine approved by MSHA under Part 7 or Part 36. The composition of the existing fleet would not be impacted by this part of the proposed rule.

While these proposed work practice controls are similar to existing rule in effect in underground coal mines, they are somewhat less stringent. For example, unlike in coal mines, the proposed maintenance rule in underground metal and nonmetal mines would not require operators to establish training programs that meet certain criteria. Nor would the proposed rule require weekly tailpipe emissions tests.

The second thing the proposal would do is establish a limit on the concentration of dpm permitted in areas of an underground metal or nonmetal mine where miners work or travel.

The proposed standard is intended to limit dpm concentrations to which miners are exposed to about 200 micrograms per cubic meter of air—expressed as 200_{DPM} μg/m^3. However, in an effort to make things easier on a day-to-day basis for the mining community, the proposed concentration limit on dpm for this sector would be expressed in terms of the measurement method MSHA will use for compliance purposes to determine dpm concentrations. (That method, NIOSH Analytical Method 5040, is specified in proposed § 57.5061, and is discussed in more detail in response to Question 12. MSHA is proposing to use it because of its accuracy). The method will analyze a dust sample to determine the amount of total carbon present. Total carbon comprises 80–85% of the dpm emitted by diesel engines. Accordingly, using the lower boundary of 80%, a concentration limit of 200_{DPM} μg/m^3 can be achieved by restricting total carbon to 160_{TC} μg/m^3. This is the way the proposed standard is expressed:

> After [insert the date 5 years after the date of promulgation of this rule] any mine operator covered by this part shall limit the concentration of diesel particulate matter to which miners are exposed by restricting the average eight-hour equivalent full shift airborne concentration of total carbon, where miners normally work or travel, to 160 micrograms per cubic meter of air (160_{TC} μg/m^3).

All underground metal and nonmetal mines would be given a full five years to meet this limit, which is referred to in this preamble as the ''final'' concentration limit. However, starting eighteen months after the rule is promulgated, underground metal and nonmetal mines would have to observe an ''interim'' dpm concentration limit—expressed as a restriction on the concentration of total carbon of 400 micrograms per cubic meter (400_{TC} μg/m^3). The interim limit would bring the concentration of whole dpm in underground metal and nonmetal mines to which miners are exposed down to about 500 micrograms per cubic meter. No limit at all on the concentration of dpm would be applicable for the first eighteen months following promulgation. Instead, this period would be used to provide compliance assistance to the metal and nonmetal mining community to ensure it understands how to measure and control diesel particulate matter concentrations in individual operations (and to implement work practice controls).

A mine operator would have to use engineering or work practice controls to keep dpm concentrations below the applicable limit. Administrative controls (e.g., the rotation of miners) and personal protective equipment (e.g., respirators) are explicitly barred as a means of compliance with the interim or final concentration limit. An operator could filter the emissions from diesel-powered equipment, install cleaner-burning engines, increase ventilation, improve fleet management, or use a variety of other readily available controls; the selection of controls would be left to the operator's discretion. MSHA has published a ''toolbox'' of approaches that can be used to reduce dpm; a copy of this useful publication is appended to the end of this document. The Agency has also developed a model that can be run on a standard spreadsheet program to compare the effects of alternative controls before purchase and implementation decisions are made. The model, and some examples of its

use, are presented in Part V of this preamble.

The proposal would provide that, if an operator of a metal or nonmetal mine can demonstrate that there is no combination of controls that can, due to technological constraints, be implemented within the 5 years permitted to reduce the concentration of dpm to the final concentration limit, MSHA may approve an application for an additional extension of time to comply with the dpm concentration limit. Such a special extension is available only once, and is limited to 2 years. To obtain a special extension, an operator must provide information in the application adequate for MSHA to ensure that the operator will: (a) maintain concentrations at the lowest limit which is technologically achievable; and (b) take appropriate actions to minimize miner exposure (e.g., provide suitable respiratory protection during the extension period).

Measurements to determine noncompliance with the dpm concentration limit would be made directly by MSHA, rather than having the Agency rely upon operator samples. Under the rule, a single Agency sample, using the sampling and analytical method prescribed by the rule, would be adequate to establish a violation. MSHA would take measurement uncertainty into account before issuing a citation, as discussed in response to Question 12.

The proposed rule would require that if an underground metal or nonmetal mine exceeds the applicable limit on the concentration of dpm, a diesel particulate matter compliance plan must be established and remain in effect for 3 years. The purpose of such plans is to ensure that the mine has instituted practices that will demonstrably control dpm levels thereafter. Reflecting current practices in this sector, the plan would not have to be preapproved by MSHA. The plan would include information about the diesel-powered equipment in the mine and applicable controls. The proposed rule would require operator sampling to verify that the plan is effective in bringing dpm levels down below the applicable limit, with the records kept at the mine site with the plan to facilitate review. Failure of an operator to comply with the requirements of the dpm control plan or to conduct adequate verification sampling would be a violation; MSHA would not be required to sample to establish such a violation.

To enhance miner awareness of the hazards involved, mines using diesel-powered equipment must annually train miners exposed to dpm in the hazards associated with that exposure, and in the controls being used by the operator to limit dpm concentrations. An operator may propose to include this training in the Part 48 training plan.

The proposed rule would also require all operators in this sector using diesel-powered equipment to sample as often as necessary to effectively evaluate dpm concentrations at the mine. The purpose of this requirement is to assure that operators are familiar with current dpm concentrations so as to be able to protect miners. Since mine conditions vary, MSHA is not proposing to establish a defined schedule for operator sampling; but rather, to propose a performance-oriented approach. The Agency would evaluate compliance with this sampling obligation by reviewing evidence of operator compliance with the concentration limit, as well as information retained by operators about their sampling.

Consistent with the statute, the proposed rule would require that miners and their representatives have the right to observe any operator monitoring—including any sampling required to verify the effectiveness of a dpm control plan.

(12) How Is MSHA Proposing To Measure the Amount of dpm in Underground Metal and Nonmetal Mines?

Techniques for measuring dpm concentrations are reviewed in detail in Part II of this preamble.

For a method to be used for compliance purposes, it must be able to distinguish dpm from other particles present in various mines, be accurate at the concentrations to be measured, and consistently measure dpm regardless of the mix or condition of the equipment in the mine.

The technique being proposed for compliance sampling in underground metal and nonmetal mines meets these requirements. It involves sampling with a quartz fiber filter mounted in an open face filter holder, and a chemical analysis of the filter to determine the amount of carbon collected. The entire process, NIOSH Analytical Method 5040, has been validated as meeting NIOSH's accuracy criterion—i.e., that measurements come within 25% of the true concentration at least 95% of the time. While there are other methods that can be used to provide accurate measurements of diesel particulate matter in some types of mines and under some circumstances, this technique appears to provide consistent and accurate results in all underground metal and nonmetal mining environments.

Although the NIOSH method was validated using a regular respirable dust sampler, MSHA gave consideration to the use of a size selector impactor sampler, developed by the Bureau of Mines, that would not collect any dust over 1 micrometer (micron) in diameter. Canada is exploring the use of such an approach with an alternative analytical method. However, measurements by the Agency to date indicate that in some underground metal and nonmetal mines, as much as 30% of the dpm present may be larger than 1 micron in size. The Agency is continuing to evaluate such an approach, and welcomes comments on the implications to miners and mine operators of excluding from consideration this larger fraction of dpm.

The method described in NIOSH Analytical Method 5040 provides a way to determine the amount of diesel particulate in the sample. Diesel particulate consists of a core of elemental carbon onto which are adsorbed various organic components and sulfates. The NIOSH Analytical Method separately analyzes the amount of elemental carbon and the amount of organic carbon present in the sample. These two amounts are then added together to get the amount of total carbon present in the sample. In the absence of any measurable quantity of any other organic carbon source, this method provides a way of reliably measuring dpm at concentrations at and below the proposed final concentration limit.

MSHA has also evaluated other analytical approaches—the gravimetric method (simply weighing the sample), the respirable combustible dust (RCD) analysis used in Canada, and the elemental carbon approach. As discussed in detail in Part II, use of these methods to measure dpm for compliance purposes in underground metal and nonmetal mines present various questions that the Agency has not been able to satisfactorily address at point in the rulemaking process. For example, the gravimetric method has not been validated for use at lower concentration levels, the RCD method is not recommended for use in certain types of underground metal and nonmetal mines, and there appears to be some variability in the relationship between elemental carbon and whole diesel particulate.

MSHA does not believe that either oil mists or cigarette smoke in underground metal or nonmetal mines will pose a problem in using this method. MSHA currently has no data as to the frequency of occurrence or the magnitude of any

potential interference from oil mist, but during its studies of measurement methods in underground mines, MSHA has not encountered situations where oil mist was found to be an interferant. Moreover, the Agency assumes that when operators implement the proposal's maintenance requirements, this will minimize any remaining potential for such interference. Cigarette smoking can be prohibited by an operator during any testing. MSHA welcomes comments as to the scope of any possible interferences with the proposed methods and measures for addressing them.

Proposed § 57.5061(a) would explicitly provide that MSHA use the validated NIOSH procedure for total carbon, or ''any method subsequently determined by NIOSH to provide equal or improved accuracy'' in underground metal and nonmetal mines. Measurement technology is always improving, and MSHA believes that providing for some flexibility in this regard can ultimately benefit the entire mining community.

Proposed § 57.5061(b) provides that a single sample using the prescribed method would provide an adequate basis for citing noncompliance. As with the sampling methodology, MSHA is proposing to specifically state this policy as a provision of the rule itself to ensure it is clearly understood. Single shift sampling is the normal practice for OSHA and MSHA. As is its practice with other compliance determinations based on measurement, MSHA would not issue a citation unless the measurement exceeds the compliance limit by a ''margin of error'' sufficient to demonstrate noncompliance at a 95% confidence level. While MSHA is still conducting research to determine exactly what margin of error would be appropriate to establish such a confidence level, the Agency expects it to be between 10 and 20% of the concentration limit. Thus, assuming for the sake of example that the margin of error is 15%, a citation would not be issued for exceeding the final concentration limit unless the measured total carbon is above 184_{TC} μg/m^3 (115% of 160_{TC} μg/m^3).

Finally, it should be noted that the proposed limit is expressed in terms of the average airborne concentration during each full shift expressed as an 8-hour equivalent. Measuring during the full shift ensures that the entire exposure is monitored, and the limit is based on the average exposure. Using an 8-hour equivalent ensures that a miner who works extended shifts would not have a higher exposure burden than a miner who works an 8-hour shift.

(13) Would the Concentration Limit Apply in All Areas of an Underground Metal or Nonmetal Mine?

The concentration limit would apply only in underground areas where miners normally work or travel. The purpose of this restriction is to ensure that mine operators do not have to monitor particulate concentrations in areas where miners do not normally work or travel—e.g., abandoned areas of a mine.

However, it should be noted that the proposed interim and final concentration limits would apply in any area of a mine where miners ''normally'' work or travel—not just where miners might be present at the moment.

(14) Does the Rule Contemplate That MSHA Use Area Sampling To Determine Compliance?

The limit on the concentration of diesel particulate to which miners are exposed is intended to be applicable to persons, occupations or areas. This means that the Agency may sample by attaching a sampler to an individual miner, locate the sampler on a piece of equipment where a miner may work, or locate the sampler at a fixed site where miners normally work or travel.

(15) What Is the Basis for the Concentration Limit Being Proposed in Underground Metal and Nonmetal Mines?

The proposed rule would seek to reduce exposures to dpm in underground areas of underground metal and nonmetal mines to a level of around 200_{DPM} μg/m^3. (As explained in response to Question 12, the concentration limit is being expressed in terms of the total carbon measurement system MSHA will use to determine the amount of dpm, 160_{TC} μg/m^3).

Look again at Figure I–1, which compares the range of exposures of different groups of workers. You can see that capping dpm concentrations at 200_{DPM} μg/m^3 (all the information on the figure is presented in terms of estimated whole diesel particulate) will eliminate the worst mining exposures. In fact, such a cap will bring miner exposures down to a level commensurate with those reported for other groups of workers who use diesel-powered equipment. The proposed rule would not bring concentrations down as far as the proposed ACGIH TLV^R of 150_{DPM} μg/m^3. Nor does MSHA's risk assessment suggest that the proposed rule would eliminate the significant risks to miners of dpm exposure.

As a result of the Agency's statutory obligation to attain the highest degree of safety and health protection for miners, the Agency explored the option, and implications, of requiring mines in this sector to comply with a lower concentration limit than that being proposed. The Agency looked at simulations of the controls some underground metal and nonmetal mines might use to lower dpm concentrations, including at least one control with a major cost component (aftertreatment filter or new engine). The results, discussed in Part V of this preamble, indicate that although the matter is not free from question, it may not be feasible at this time for the underground metal and nonmetal mining industry as a whole to comply with a significantly lower limit than that being proposed. More information on this issue, and comments of the information presented by the Agency in Part V, would be appreciated.

The other side of this question—whether the rule that is proposed is feasible for the underground metal and nonmetal mining industry—is discussed in the next Question and Answer.

(16) Is It Feasible for the Metal and Nonmetal Industry as a Whole To Comply with the Proposed Concentration Limit?

MSHA has evaluated the feasibility of the concentration limit in the underground metal and nonmetal sector. Approximately 78 percent, of the 261 underground metal and nonmetal mines use diesel powered equipment, and MSHA estimates this sector has approximately 4,100 diesel engines. The engines can be of large size, and so tend to have high emissions. Moreover, unlike in the coal sector, there is no single control device that can be readily and widely applied to reduce dpm emissions in underground metal and nonmetal mines. The paper filter aftertreatment devices that can eliminate up to 95% of particulate matter emissions from permissible coal equipment are not available here without the addition of other controls. Permissible equipment requires the exhaust to be cooled to avoid explosive hazards; in turn, this permits paper afterfilters to be installed directly without burning. For most metal and nonmetal equipment, it is necessary to first install water scrubbers or other devices to cool the exhaust before using the paper filters. There are other types of filtering devices that could be directly applied to this equipment, but none to date that is quite as effective (although MSHA is seeking information as to whether creation of a market for filters could lead to prompt commercial development of ceramic filters with

high particulate removal efficiencies). Moreover, the ventilation systems common in this sector, and the variation of mine types, suggested that a careful feasibility review is warranted.

Accordingly, MSHA undertook special analyses in which the Agency's staff experts simulated how various control methods could be used to meet the needs of some mines expected to have unusually difficult problems: an underground limestone mine, an underground (and underwater) salt mine, and an underground gold mine. The results of these analyses are discussed in Part V of the preamble, together with the methodology used in modeling the results. In each case, the analysis revealed that there are available controls that can bring dpm concentrations down to well below the final limit—even when the controls that needed to be purchased were not as extensive as those which the Agency is assuming will be needed in determining the costs of the proposed rule. As a result of these studies, the Agency has tentatively concluded that, in combination with the required ''best practices'', there are engineering and work practice controls available to bring dpm concentrations in all underground metal and nonmetal mines down to 400_{TC} μg/m^3 within 18 months. Moreover, based on the mines it has examined to date, MSHA has tentatively concluded that controls are available to bring dpm concentrations in all underground metal and nonmetal mines down to 160_{TC} μg/m^3 within 5 years.

The Agency would welcome comments from the mining community on the methodology of the model used in these studies, and hopes the mining community will submit the actual results of its own studies using the model. More information on the model is contained in Part V of the preamble. It uses a spreadsheet template that can be run on standard programs, and MSHA would be pleased to make copies available and answer any questions about the use of the model.

The best actions for an individual operator to take to come into compliance with the interim and final concentration limits will depend upon an analysis of the unique conditions at the mine. The proposed rule provides 18 months after it is promulgated for MSHA to provide technical assistance to individual mine operators. It also gives all mine operators in this sector an additional three and a half years to bring dpm concentrations down to the proposed final concentration limit—using an interim concentration limit during this time which the Agency is confident every mine in this sector can timely meet. And the rule provides an opportunity for a special extension for an additional two years for mines that have unique technological problems meeting the final concentration limit.

As noted during 1995 workshops co-sponsored by MSHA on methods for controlling diesel particulate, many underground metal and nonmetal mine operators have already successfully determined how to reduce diesel particulate concentrations in their mines. MSHA has disseminated the ideas discussed at these workshops to the entire mining community in a publication, ''Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox'' (a copy of this publication is appended to the end of this document). The control methods are divided into eight categories: use of low emission engines; use of low sulfur fuel; use of aftertreatment devices; use of ventilation; use of enclosed cabs; diesel engine maintenance; work practices and training; fleet management; and respiratory protective equipment. And as noted above, MSHA has designed a model in the form of a computer spreadsheet that can be used to simulate the effects of various controls on dpm concentrations. This model is discussed in Part V of the preamble, and several examples are provided. This makes it possible for individual underground mine operators to evaluate the impact on diesel particulate levels of various combinations of control methods, prior to making any investments, so each can select the most feasible approach for his or her mine.

(17) Suppose an Underground Metal or Nonmetal Mine Really Does Have a Unique Technological Problem That Precludes Timely Compliance? Will MSHA Utilize Qualified and Experienced Technical Personnel To Review Operator Applications for Special Extensions of Time To Comply With the Final Concentration Limit in Underground Metal and Nonmetal Mines?

It is MSHA's intent that primary responsibility for analysis of the operator's application for a special extension will rest with MSHA's district managers. District managers are the most familiar with the conditions of mines in their districts, and have the best opportunity to consult with miners as well. At the same time, MSHA recognizes that district managers may need assistance with respect to the latest technologies and solutions being used in similar mines elsewhere in the country. Accordingly, the Agency intends to establish within its Technical Support directorate in Arlington, Va., a special panel to consult on these issues, to provide assistance to district managers, and to give final approval of any application for a special extension.

(18) If a Special Extension of Time To Comply With the Final dpm Concentration Limit Is Approved for an Underground Metal or Nonmetal Mine, What Operating Parameters Would Be Imposed on That Mine during the Duration of the Special Extension?

Any parameters will be negotiated between the individual operator and MSHA.

An operator will begin the process by filing an application for a special extension. The application must set forth what actions the operator commits to taking to maintain the lowest concentration of diesel particulate achievable. The application must also include adequate information for the Secretary to ascertain the lowest concentration of diesel particulate achievable, as demonstrated by data collected under conditions that are representative of mine conditions using the total carbon sampling method. In addition, the application must set forth what actions the operator will take to minimize the exposure of miners who will have to work or travel in areas which are going to be above the concentration limit by virtue of the extension. Since administrative controls and personal protective equipment can help reduce miner exposure, under these special circumstances operators may propose to include use of these approaches in their applications.

In some cases, what may be involved is a small area with only limited miner access; in other cases, an entire working section may be involved. Rather than establish ''one-size-fits-all'' standards for such situations, the proposal leaves it to the operator to submit a suggested approach.

The proposed rule requires a mine operator to comply with the terms of an approved extension application, and a copy would be posted at the mine site. Failure to comply with the specific commitments agreed to as part of the extension, and contained therein, would thus be citable.

(19) Why Do Underground Metal and Nonmetal Mine Operators Have To Have a Diesel Particulate Control Plan?

Underground metal and nonmetal operators will not have to have a compliance plan if they are in compliance. Considerable time is provided under the proposed rule to come into compliance, and operators can thereafter monitor their mines to

ensure they stay below the required concentration limit.

But some operators may decline to take the actions necessary to achieve compliance in a timely manner, and others may need to rethink their approaches from time to time as equipment changes increase dpm concentration levels. Providing for a control plan in the event of a violation of the concentration limit ensures that there is a deliberative effort as to how to solve the dpm concentration problem, and that everybody understands what is going to be done to eliminate it. Accordingly, proposed § 57.5062 requires that in the event an operator is determined to have exceeded the applicable limit on diesel particulate concentration, the operator must establish a diesel particulate control plan if one is not already in effect, or modify the existing diesel particulate control plan.

(20) Must dpm Control Plans in Metal and Nonmetal Mines Be Pre-Approved by MSHA? How Long Would They Last?

Operator control plans would NOT have to be approved by MSHA. This is consistent with the practice in this sector concerning ventilation plans (with which the dpm control plan may be combined). The Agency gave serious consideration to requiring approval of such plans to ensure there was agreement as to their effectiveness, or at least to approval of compliance plans for repeat violators; but in light of the resource demands this might impose on the agency, and the operator verification sampling built into the proposed rule, the Agency decided not to make such a proposal. Comment on this point is welcome.

A control plan for a metal or nonmetal mine would not need to be retained and modified forever—as is the practice with plans for underground coal mines. Rather, under the proposal, a dpm control plan in a metal or nonmetal mine would stay in effect for 3 years, and during its lifetime, the plan is to be modified as appropriate to reflect changes in mining conditions.

MSHA seriously considered requiring a longer lifetime for compliance plans. First, the Agency wants to provide a strong incentive to come into compliance in a timely fashion. Second, the Agency wants to be sure that where a plan is needed to clarify compliance obligations, it stay in place at a mine long enough to ensure that the obligations undertaken in the plan become a mine routine; the goal is to maintain a mine in compliance, not just have a temporary fix. The Agency also has to be realistic about conserving the resources of its health professionals; re-sampling mines whose control plans have expired takes resources away from other priorities. The Agency is aware, however, that operating under long-term control plans is not standard practice in metal and nonmetal mines. Moreover, it recognizes the need to re-sample all mines with some regularity due to changing mining conditions. Accordingly, the proposed rule seeks to strike a balance in this regard.

(21) What Must Be Included in a dpm Control Plan If One Is Required? And How Would Its Effectiveness Be Verified?

The diesel particulate control plan would include three elements: the controls the operator will utilize to maintain the concentration of diesel particulate at the mine to the applicable limit; a list of diesel-powered units maintained by the mine operator; and information about any unit's emission control device and the parameters of any other method used to control dpm concentrations. Upon request, the plan (or amended plan) is to be submitted to the District Manager, with a copy to the authorized representative of miners—but no approval process would be required; a copy is to be maintained at the mine site. Documentation verifying the effectiveness of the plan in controlling diesel particulate to the required level would have to be maintained with the plan, and submitted to MSHA upon request.

Proposed § 57.5062(c) provides that to verify the effectiveness of a control plan or amended control plan, operators must have monitoring data, collected using the total carbon method which MSHA will be required to use for enforcement purposes, sufficient to confirm that the plan or amended plan will control the concentration of diesel particulate to the applicable limit under conditions that can be reasonably anticipated in the mine.

Verification by operators is being proposed to ensure that primary responsibility for ensuring a dpm control plan is effective is not shifted to MSHA. The Agency has only limited resources to conduct sampling. Moreover, while a single sample can demonstrate that a mine is out of compliance under the conditions sampled, it takes multiple samples to demonstrate that miners are protected under the variety of conditions that can be reasonably anticipated in the mine (e.g., during production and seasonal changes). By clarifying operator responsibilities in this regard, the proposal ensures an appropriate balance of responsibilities.

The proposed rule does not specify that any defined number of samples must be taken—the intent is that the sampling provide a representative picture of whether the plan or amended plan is working. The proposed rule does, however, specify that the total carbon method be used for verification sampling. This is an exception to the general rule that mine operators have discretion in the choice of what sampling technique to use in their own monitoring programs (see response to Question 29). The purpose of verification sampling is to verify the effectiveness of a plan established or modified in response to a violation through MSHA sampling; if operators used an alternative technique to sample, it would complicate the determination of whether the violation was being adequately addressed by the plan.

(22) Why Is the Agency Proposing That All Underground Metal and Nonmetal Mines Follow Certain ''Best Practices''—Regardless of the Concentration of Diesel Particulates at Such Mines?

The Agency's risk assessment supports reduction of dpm to the lowest level possible. But as discussed in response to Question 16, feasibility considerations dictated proposing a concentration limit that does not eliminate the significant risks that dpm exposure poses to miners.

One approach that can be used to bridge the gap between risk and feasibility is to establish an ''action level''. In the case of MSHA's noise proposal, for example, MSHA proposed a ''permissible exposure level'' of a time-weighted 8-hour average (TWA_8) of 90 dBA (decibels, A-weighted), and an ''action level'' of half that amount—a TWA_8 of 85 dBA. In that case, MSHA has determined that miners are at significant risk of material harm at a TWA_8 of 85 dBA, but technological and feasibility considerations may preclude the industry as a whole, at this time, from eliminating exposures below a TWA_8 90 dBA. Accordingly, MSHA proposed that mine operators must take certain actions to limit miner exposure to noise above a TWA_8 of 85 dBA that are feasible (e.g., provide hearing exams and hearing protectors).

MSHA considered the establishment of a similar ''action level'' for dpm—probably at half the proposed concentration limit, or 80_{TC} $\mu g/m^3$. Under such an approach, mine operators whose dpm concentrations are above the ''action level'' would be required to implement a series of ''best practices''—e.g., limits on fuel types, idling, and engine maintenance. MSHA welcomes comments on whether it

should take such an approach with dpm.

In lieu of this approach, the Agency decided instead to propose an approach that it believes will be simpler for the mining community to implement: requiring compliance with the ''best practices'' in all cases. There are several reasons why the agency has proposed this approach.

First, sampling by both operators and MSHA would have to be much more frequent if a measurement trigger for additional actions were to be established. This is because many more areas of a mine would need to be checked regularly than if only a higher trigger is in place. In underground metal and nonmetal mines, most areas using diesel equipment would exceed a limit of 75_{TC} μg/m³ anyway, so the sampling needed to confirm the situation would appear to be wasteful.

Second, diesel equipment is often moving, meaning that maintenance and fleet requirements triggered by a single sample might switch on and off in ways that are hard to predict. Moreover, using an action level in an area of a mine to trigger maintenance requirements might put certain machines in the fleet under one set of maintenance rules and other machines under an alternative set, complicating mine administration.

Third, underground coal mines which use diesel-powered equipment already observe a set of such requirements. While certain special safety hazards associated with the use of diesel-powered equipment in underground coal mines warrant certain work practices that may not be warranted in other sectors, the safety rationale for adopting some of these practices seems as valid in other sectors as in underground coal. Fourth, given the history of the mining industry with lung problems associated with this type of work, adopting a prudent approach seems a wise course when the costs of prevention are limited. This is standard health practice.

Finally, a number of the work practices proposed appear to have significant benefits—improving the efficiency of mining operations by ensuring that diesel mining equipment is maintained in good working order to meet productivity demands.

MSHA specifically solicits comments from the public on whether or not it should require ''best practices'' to lower the dpm concentration.

(23) Will the Proposed Restrictions on Fuel and Fuel Additives Increase Costs or Limit Engine Reliability?

MSHA believes the answer to both questions is no.

Under proposed § 57.5065, mine operators would be able to use only low-sulfur diesel fuel. This requirement is identical to that for underground coal diesel equipment. Number 1 and number 2 diesel fuel would be permitted. MSHA has been advised that low-sulfur diesel fuel is now readily available in all areas of the country in order to meet EPA requirements; in many places, it is the only fuel available.

Similarly, the proposal would extend to all mines the ban in underground coal mines on the use of diesel-fuel additives other than those approved by EPA. There is a long list of approved additives. Copies are available from EPA and the list is posted on its Web site, or you may link to them from MSHA's Web site (http://www.msha.gov/s&hinfo/deslreg/1901(c).htm). Using only additives that have been approved ensures that diesel particulate concentrations are not inadvertently increased, while also protecting miners against the emission of other toxic substances.

(24) How Is MSHA Going To Distinguish Between Idling That Is Permitted and Idling That Isn't Permitted?

Keeping idling to a minimum is a very important way to reduce pollution in mine atmospheres, and this would be required by proposed § 57.5065(c). Idling engines can actually produce more pollutants than engines under load. Generally of more concern, however, is the impact idling engines can have on localized exposures. In underground operations, an engine idling in an area of minimal ventilation or a ''dead air'' space could cause an excess exposure to the gaseous emissions, especially carbon monoxide, as well as to diesel particulate. Eliminating unnecessary idling can make a substantial contribution toward preventing localized exposure to high particulate concentrations.

However, there are some circumstances in which idling is necessary. The proposal would permit idling in connection with ''normal mining operations''. In the proposal, MSHA does not attempt to define this term, and would intend this rule to be administered with reference to commonly understand practices of what is necessary idling. For example, idling while waiting for a load to be unhooked, or waiting in line to pick up a load, is normally part of the job; idling while eating lunch is normally not part of the job. But if the idling is necessary due to the very cold weather conditions, it should not be barred. On the other hand, idling should not be permitted in other weather conditions just to keep balky older engines running; in such cases, the correct approach is better maintenance. MSHA recognizes that to administer this provision in a common sense manner may require the provision of examples to both MSHA inspectors and to the mining community; accordingly, the Agency welcomes specific examples of circumstances where idling should and should not be permitted. The Agency recently implemented a similar provision for the underground coal mining sector, and MSHA will consider the experience gained under that rule in formulating a final diesel particulate rule and compliance guide.

(25) Will the Proposed Rule Require That Diesel Engines and Aftertreatment Devices Used in Underground Metal and Nonmetal Mines Be Maintained in Mint Condition?

No. § 57.5066(a) of the proposed rule would, however, require that the engines and aftertreatment devices not be permitted to deteriorate to the point they create needless pollution. The air intake system, the cooling system, lubrication system, fuel injection system and exhaust system of an engine must all be maintained on a regular schedule if the toxic contaminants in the engine exhaust are to be minimized. And there is little point in having an aftertreatment device to limit pollution if it is not maintained in working order; moreover, it can damage the engine. A good preventive maintenance program can not only keep down exhaust emissions, but help maximize vehicle productivity and engine life.

It is difficult for a rule covering all types and ages of engines used in underground metal and nonmetal mines to define precisely the level of maintenance required for each engine. Further, MSHA does not believe that it is necessary: the mining community is fully cognizant of the general requirements for engine maintenance. Accordingly, proposed § 57.5066(a) sets out in general terms the standard of care required for different types of engines.

First, an ''approved'' engine is to be maintained in approved condition. MSHA approves engines under specific regulations set forth in Title 30. The approval of the engine is tied to certain parts and specifications. When these parts or specifications are changed (e.g., an incorrect part is used, or the wrong setting), then the engine is no longer considered in approved condition. The requirements in this regard are well defined. MSHA personnel at the Approval Certification Center are

available to the mining community to respond to questions and provide specific guidance. MSHA's diesel equipment rule already requires underground coal mine fleets to convert entirely to approved engines, but at this time only some of the engines used in underground metal and nonmetal mines are approved.

Second, for any engine that is not an approved engine, the ''emission related components'' of the engine are to be maintained to manufacturer specifications. By the term ''emission related components,'' MSHA means the parts of the engine that directly affect the emission characteristics of the raw exhaust. These are basically the same components which MSHA examines for ''approved'' engines. They are: the piston; intake and exhaust values; cylinder head; camshaft; injector; fuel injection pump; governor; injection timing and fuel pump calibration; and, if applicable, turbocharger and after cooler.

Third, and finally, any emission or particulate control device installed on diesel-powered equipment is to be maintained in ''effective operating condition.'' The maintenance of an emission or particulate control device in effective operating condition involves such basic tasks as regularly cleaning the filter using whatever methods are recommended by the manufacturer for that purpose or inserting appropriate replacement filters, checking for and repairing any leaks, and similar obvious actions.

An MSHA inspector is not going to randomly order an engine to be taken out of service and torn down to check the condition of a piston against the shop manual. Rather, what will concern an inspector are the same kinds of signals that should concern a conscientious operator—for example, a history of complaints about the engine's reliability, an incomplete maintenance schedule, lack of required maintenance manuals or spare parts, the emission of black smoke under normal load, or a series of emission test results indicating a continuing engine problem. Evidence of such deficiencies is likely to lead to a closer examination. But a conscientious maintenance program is going to catch such problems before they occur.

MSHA's toolbox includes an extensive discussion of maintenance. It reminds operators and diesel maintenance personnel of the basic systems on diesel engines that need to be maintained, and how to avoid various problems. It includes suggestions from others in the mining community, and information on their success or difficulties in this regard. MSHA will continue to provide technical assistance to the mining community in this critical area.

(26) What Are the Responsibilities of a Miner Who Operates Diesel-Powered Equipment in an Underground Metal and Nonmetal Mine To Ensure it Is Not Polluting? And What Are The Responsibilities of Mine Management When Notified of a Potential Pollution Problem?

The miner who operates diesel-powered equipment is often the first one to spot a problem with the engine or emissions system. The engine may balk, have trouble handling a load, make unusual noises, exhaust too much smoke, or otherwise suggest to the person familiar with the engine's capabilities that it needs to be checked. In some cases, the miner may have the knowledge, parts, equipment and authority to fix the problem on the spot. In many cases, however, the miner operating the equipment may not have all of these. If the problem is to be addressed promptly, it is essential the miner report it to mine management—and that the mine management act on that report in a timely manner. If these actions by miner and mine management are not taken, the concentrations of diesel particulate are likely to quickly increase without anyone being aware of the danger until the next environmental monitoring is performed. To avoid this problem, proposed § 57.5066 would require that all underground metal and nonmetal mines using diesel equipment underground implement a few basic procedures. The details of implementation in each mine would be at the discretion of the mine operator.

Proposed § 57.5066(b)(1) would require the mine operator to authorize the operator of diesel-powered equipment to affix a tag to the equipment at any time the equipment operator notes a potential problem. Tagging provides a simple mechanism for ensuring that all mine personnel are made quickly aware that a piece of equipment needs to be checked by qualified service personnel. The tag may be affixed because the equipment operator picks up a problem through a visual exam conducted before the equipment is started (e.g., an exam pursuant to 30 CFR 57.14100), or because of a problem that comes to the attention of the equipment operator during mining operations—e.g., black smoke while the equipment is under normal load, rough idling, unusual noises, backfiring, etc.

The proposal leaves the design of the tag to each mine operator, provided that the tag can be dated. Comments are welcome on whether some or all elements of the tag should be standardized to ensure its purpose is met.

MSHA is not proposing that equipment tagged for such potential emission problems be automatically taken out of service. The proposal is not, therefore, directly comparable to a ''tag-out'' requirement like OSHA's requirement for automatically powered machinery, nor as stringent as MSHA's requirement to remove from service certain equipment ''when defects make continued operation hazardous to persons'' (see, e.g., 30 CFR 57.14100). While the emissions problem could pose a serious health hazard for miners directly exposed, there is no way to determine this with certainty until the equipment is tested. Moreover, the danger is not as immediate as, for example, an explosive hazard. Rather, proposed § 57.5066(b)(2) would require that the equipment be ''promptly'' examined by a person authorized by the mine operator to maintain diesel equipment (the qualifications for those who maintain and service diesel engines discussed in response to the next question). The Agency has not tried to define the term ''promptly'', but welcomes comment on whether it should do so—in terms, for example, of a limited number of shifts.

The proposal would require that a single log be retained of all equipment tagged. The proposal would permit a tag to be removed after an examination has been completed and a record of the examination made—with the date, the name of the person making the examination, and the action taken as a result of the examination. The presence of a tag serves as a caution sign to miners working near the equipment, as well as a reminder to mine management, as the equipment moves from task to task throughout the mine. While the equipment is not barred from service, operators would be expected to use common sense in using it in locations in which diesel particulate concentrations are known to be high. The records of the tagging and servicing, although basic, provide mine operators, miners and MSHA a history that will help all of them evaluate whether a maintenance program is being effectively implemented.

(27) Must Miners or Others Who Examine or Repair Diesel Engines Used in Underground Metal and Nonmetal Mines Have Special Qualifications or Training? Must Operators Establish Programs or Criteria for This Purpose?

The answer to the first question is a qualified ''yes'', and the answer to the second question is no.

Proposed § 57.5066(c) provides that: ''Persons authorized by a mine operator to maintain diesel equipment covered by paragraph (a) of this section must be qualified, by virtue of training or experience, to ensure that the maintenance standards of paragraph (a) of this section are observed.'' As discussed in response to Question 25, paragraph (a) of § 57.5066 provides that approved engines be maintained in approved condition, the emission related components of non-approved engines be maintained to manufacturer specifications, and emission or particulate control devices installed on the equipment be maintained in effective condition.

This means that regardless of who identifies a potential problem along these lines, the person who checks out the problem, and if necessary makes repairs, is someone who knows what he or she is doing. If examining and, if necessary, changing a filter or air cleaner is what is needed, a miner who has been shown how to do these tasks would be ''qualified by virtue of training or experience'' to do those tasks. For more sophisticated work, more sophisticated training or additional experience would be required. Training by a manufacturer's representative, completion of a general diesel engine maintenance course, or practical experience performing such repairs might be evidence of appropriate qualifications.

In the underground coal sector, MSHA requires each operator to establish a program to ensure that persons who work on diesel engines are qualified. That is not being proposed for the underground metal and nonmetal sector. The unique conditions in underground coal mines require the use of specialized equipment. Accordingly, the qualifications of the persons who maintain this equipment generally must be more sophisticated than in other sectors.

The proposed rule contemplates that if MSHA finds a situation where maintenance appears to be shoddy or where tampering has damaged engine approval status or emission control effectiveness, MSHA will ask the operator to provide evidence that the person who worked on the equipment was properly qualified by virtue of training or experience. Equipment sent off site for maintenance and repair is just as subject to this requirement as other equipment; it is the operator's obligation to ensure he has appropriate evidence of the qualifications of those who will work on the equipment.

(28) Can Underground Metal and Nonmetal Operators Continue To Use and Relocate Nonapproved Engines in Their Inventories?

Pursuant to MSHA's diesel equipment rule, the entire fleet of underground coal engines must be ''approved'' engines by the year 2000—even if operators must replace existing engines to comply. By contrast, proposed § 57.5067 would only require that, with a few exceptions, all engines ''introduced'' into underground areas of underground metal and nonmetal mines after the effective date must be engines that have been through MSHA's approval process under Part 7 of Chapter 30. Operators who have significant investments in their existing fleets will accordingly be able to retain those engines, provided they are maintained in the manner specified in the proposal and that the concentration of diesel particulate can be controlled in another way (e.g. ventilation, particulate filters, etc.).

However, after the rule's effective date, an operator would not be permitted to bring into underground areas of a mine an unapproved engine from the surface area of the same mine, an area of another mine, or from a non-mining operation. Since the safe level of diesel particulate is not known, promoting a gradual turnover of the existing fleet is an appropriate response to the health risk presented.

Some engines currently used in metal and nonmetal mines may have no approval criteria; in such cases, MSHA will work with the manufacturers to develop approval criteria consistent with those MSHA uses for other diesel engines. Based upon preliminary analysis, MSHA has tentatively concluded that any diesel engine meeting current on-highway and non-road EPA emission requirements would meet MSHA's engine approval standards of Part 7, subpart E, category B type engine. (See Section 4 of Part II of this preamble for further information about these engines). Currently, the EPA nonroad test cycle and MSHA's test cycle are the same for determining the gaseous and particulate emissions. MSHA envisions being able to use the EPA test data ran on the non-road test cycle for determining the gaseous ventilation rate and particulate index. The engine manufacturer would continue to submit the proper paper work for a specific model diesel engine to receive the MSHA approval. However, engine data ran on the EPA on-highway transient test cycle would not as easily be usable to determine the gaseous ventilation and particulate index. Comments on how MSHA can facilitate review of engines not currently approved would be welcome.

Engines in diesel-powered ambulances and fire-fighting equipment would be exempted from these requirements. This exemption is identical with that in the rule for diesel-powered equipment in underground coal mines.

(29) What Specifically Would Be the Obligations of an Underground Metal or Nonmetal Mine Operator To Monitor dpm Exposures and to Correct Overexposures?

Proposed § 57.5071 would require underground metal or nonmetal mine operators to monitor the concentration of diesel particulate, to initiate corrective action by the next work shift if the monitoring reveals that the concentration of diesel particulate exceeds the permitted limit, and to post sample results and the corrective action being taken.

There is no prescribed frequency for monitoring. But proposed § 57.5071(a) provides that sampling must be done as often as necessary to ''effectively evaluate,'' under conditions that can be reasonably anticipated in the mine:

(1) whether the dpm concentration in any area of the mine where miners work or travel exceeds the applicable limit; and (2) the average full shift airborne concentration at any location or on any person designated by MSHA. The first condition clarifies that it is the responsibility of mine operators to be aware of the concentrations of diesel particulate in all areas of the mine where miners work or travel, so as to know whether action is needed to ensure that the concentration does not exceed the applicable limit. The second condition is to ensure special attention to locations or persons known to MSHA to have a significant potential for overexposure to diesel particulate.

The proposed rule is performance oriented in that the regularity and methodology used to make this evaluation are not specified. MSHA's own measurements will assist the Agency in verifying the effectiveness of an operator's monitoring program. If an operator is ''effectively evaluating'' the concentration of dpm at designated locations, for example, MSHA would not expect to record concentrations above the limit when it samples at that

location. Some record of the sampling procedure and sample results will need to be retained by operators to establish that they have complied with the general obligations of this section.

The proposed rule requires, consistent with Section 103(c) of the Mine Act, that miners and their representatives have an opportunity to observe such monitoring. In accordance with this legal requirement, the proposed rule requires a mine operator to provide affected miners and their representatives with an opportunity to observe exposure monitoring of dpm by operators. Mine operators must give prior notice to affected miners and their representatives of the date and time of intended monitoring. MSHA has proposed similar language in its proposed rule on noise.

The proposed rule does not specify a required method for sampling. In the absence of a procedure to convert total carbon measurements into equivalents under other methods, methods other than NIOSH Method 5040 would not provide exact information about compliance status, but they certainly would provide a general guide to dpm concentrations if used under proper circumstances. (More information on the proper circumstances in which various methods are appropriate can be found in Section 3 of Part II of this preamble).

The proposed rule provides that an operator who has knowledge that a concentration limit has been exceeded must initiate corrective action by the next work shift and promptly complete such action. The hazards presented by overexposure to dpm may not as immediate as an explosive hazard, but are nevertheless serious. Accordingly, although MSHA is not proposing immediate withdrawal of miners nor even immediate completion of abatement action, the agency is proposing that mine operators begin abatement action by the next shift and promptly complete such action, not allowing it to drag out while miners are being overexposed. The Agency is also proposing to require posting of the corrective action to implement the statutory requirement that notice of corrective action be provided to miners. MSHA welcomes comment on how it might clarify its expectations with respect to the initiation of corrective action, including what specific guidance to provide to operators not using the total carbon method and as to when corrective action must begin when the analysis is performed on a delayed basis off-site. MSHA also welcomes comment as to whether personal notice of corrective action would be more appropriate than posting given the health risks involved.

Proposed § 57.5071(d) provides that monitoring results must be posted on the mine bulletin board, and a copy provided to the authorized representative of miners. As with the training requirements, posting ensures that miners are kept aware of the hazard so they can actively play their role in prevention.

(30) What Records Must be Kept by Metal and Nonmetal Operators? Where Must they be Kept, and Who Has Access to Them?

Recordkeeping and retention requirements are noted in the text of each section of the proposed rule creating the requirement. For the sake of convenience, a table of record-keeping requirements is provided in proposed § 57.5075(a). The table lists the records that would be required under the proposed changes to Part 57, notes the proposed section of Part 57 creating the recordkeeping requirement, and notes the type of record and retention time. MSHA would welcome comment on whether this presentation is useful.

In some cases, the record required is expressed in general terms: e.g., ''evidence of competence to perform maintenance'', pursuant to proposed § 57.5066(c). As long as each operator has some record that establishes this fact, it does not matter that the records of one operator are not the same as the records of another operator. While an MSHA inspector may well be willing to accept oral evidence on a particular point (e.g., who performed a repair), operators should retain written documentation adequate to demonstrate the facts involved (e.g., a logbook for each engine showing who worked on it, the date, the work performed, and any follow-up needs or plans). MSHA would welcome comments on whether the agency should be more specific as to the recordkeeping systems mine operators should utilize.

The proposed rule generally provides that records required be retained at the mine site. These records need to be where an inspector can view them during the course of an inspection, as the information in the records may determine how the inspection proceeds. But if the mine site has an operative fax machine or computer terminal, this section would permit the records to be maintained elsewhere. MSHA's approach in this regard is consistent with Office of Management and Budget Circular A–1. Mine operators must promptly provide access to compliance records upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners. Access to a miner's sample records must also be provided to a miner, former miner, or personal representative of a miner—the first copy at no cost, and any subsequent copies at reasonable cost.

MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000.

II. Background Information.

This part provides the context for this rulemaking. The nine topics covered are:

(1) The role of diesel-powered equipment in mining;

(2) Diesel exhaust and diesel particulate;

(3) Methods available to measure dpm;

(4) Reducing soot at the source—engine standards;

(5) Limiting the public's exposure to soot—ambient air quality standards;

(6) Controlling diesel particulate emissions in mining—a Toolbox;

(7) Existing mining standards that limit miner exposure to occupational diesel particulate emissions;

(8) How other jurisdictions are restricting occupational exposure to diesel soot; and

(9) MSHA's initiative to limit miner exposure to diesel particulates—the history of this rulemaking and related actions.

In addition, a recent MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox'', contains considerable information of interest in this rulemaking. The ''Toolbox'' which includes additional information on methods for controlling dpm, and a glossary of terms, is appended to the end of this document.

These topics will be of interest to the entire mining community, even though this rulemaking is specifically confined to the underground metal and nonmetal sector.

(1) *The Role of Diesel-Powered Equipment in Mining.* Diesel engines now power a full range of mining equipment on the surface and underground, in both coal and in metal/nonmetal mining. Many in the mining industry believe that diesel-powered equipment has a number of productivity and safety advantages over electrically-powered equipment. Nevertheless, concern about miner safety and health has slowed the spread of this technology, and in certain states resulted in a complete ban on its use in

underground coal mines. As the industry has moved to realize the advantages this equipment may provide, the Agency has endeavored to address the miner safety and health issues presented.

Historical Patterns of Use. The diesel engine was developed in 1892 by the German engineer Rudolph Diesel. It was originally intended to burn coal dust with high thermodynamic efficiency. Later, the diesel engine was modified to burn middle distillate petroleum (diesel fuel). In diesel engines, liquid fuel droplets are injected into a prechamber or directly into the cylinder of the engine. Due to compression of air in the cylinder the temperature rises high enough in the cylinder to ignite the fuel.

The first diesel engines were not suited for many tasks because they were too large and heavy (weighing 450 lbs. per horsepower). It was not until the 1920's that the diesel engine became an efficient lightweight power unit. Since diesel engines were built ruggedly and had few operational failures, they were used in the military, railway, farm, construction, trucking, and busing industries. The U.S. mining industry was slow, however, to begin using these engines. Thus, when in 1935 the former U.S. Bureau of Mines published a comprehensive overview on metal mine ventilation (McElroy, 1935), it did not even mention ventilation requirements for diesel-powered equipment. By contrast, the European mining community began using these engines in significant numbers, and various reports on the subject were published during the 1930's. According to a 1936 summary of these reports (Rice, 1936), the diesel engine had been introduced into German mines by 1927. By 1936, diesel engines were used extensively in coal mines in Germany, France, Belgium and Great Britain. Diesel engines were also used in potash, iron and other mines in Europe. Their primary use was in locomotives for hauling material.

It was not until 1939 that the first diesel engine was used in the United States mining industry, when a diesel haulage truck was used in a limestone mine in Pennsylvania. In 1946 diesel engines were introduced in coal mines. Today, however, diesel engines are used to power a wide variety of equipment in all sectors of U.S. mining, such as: air compressors; ambulances; crane trucks; ditch diggers; foam machines; forklifts; generators; graders; haul trucks; load-haul-dump machines; longwall retrievers; locomotives; lube units; mine sealant machines; personnel cars; hydraulic pump machines; rock dusting machines; roof/floor drills; shuttle cars; tractors; utility trucks; water spray units and welders.

Estimates of Current Use. Estimates of the current inventory of diesel engines in the mining industry are displayed in Table II–1. Not all of these engines are in actual use. Some may be retained rather than junked, and others are spares. MSHA has been careful to take this into account in developing cost estimates for this proposed rule; its assumptions in this regard are detailed in the Agency's PREA.

TABLE II–1.—DIESEL EQUIPMENT IN THREE MINING SECTORS

Mine type	# Mines [2]	# Mines w/ diesel	# Engines
Underground Coal	971	[3] 173	[4] 2,950
Small [1]	426	15	50
Large	545	158	2,900
Underground M/NM	261	203[5]	[6] 4,100
Small [1]	130	82	625
Large	131	121	3,475
Surface Coal	1,673	[7] 1,673	[8] 22,000
Small [1]	1,175	1,175	7,000
Large	498	498	15,000
Surface M/NM	10,474	[9] 10,474	[10] 97,000

Notes on Table II–1:

(1) A mine with less than 20 miners. MSHA traditionally regards mines with less than 20 miners as ''small'' mines, and those with 20 or more miners as ''large'' mines based on differences in operation. However, in examining the impact of the proposed regulations on the mining community, MSHA, consistent with the Small Business Administration definition for small mines, which refers to employers with 500 employees or less, has analyzed impact for this size. This is discussed in the Agency's preliminary regulatory economic analysis for this proposed rule.
(2) Preliminary 1996 MSHA data.
(3) Data from MSHA approval and certification center, Oct. 95.
(4) Actual inventory, rounded to nearest 50.
(5) Estimates are based on a January 1998 count, by MSHA inspectors, of underground mines that use diesel powered equipment.
(6) The estimates are based on a January 1998 count, by MSHA inspectors, of diesel powered equipment normally in use.
(7) Based on assumption that all surface coal mines had some diesel powered equipment.
(8) Based on MSHA inventory of 25% of surface coal mines.
(9) MSHA assumes all surface M/NM mines use some diesel engines.
(10) Derived by applying ratios (engines per mine) from MSHA inventory of surface coal mines to M/NM mines.

As noted in Table II–1, a majority of underground metal and nonmetal mines, and all surface mines, use diesel-powered equipment. This is not true in underground coal mines—in no small measure because, as discussed later in this part, several key underground coal states have for many years banned the use of diesel-powered equipment in such mines.

Neither the diesel engines nor the diesel-powered equipment are identical from sector to sector. This relates to the equipment needs in each sector. This is important information because the type of engine, and the type of equipment in which it is installed, can have important consequences for particulate production and control.

As the horsepower size of the engine increases, the mass of dpm emissions produced per hour increases. (A smaller engine may produce the same or higher levels of particulate emissions per volume of exhaust as a large engine, due to the airflow, but the mass of particulate matter increases with the engine size). Accordingly, as engine size increases, control of emissions may require additional efforts.

Diesel engines in metal and nonmetal underground mines, and in surface coal mines, range up to 750 HP or greater; by contrast, in underground coal mines, the average engine size is less than 150 HP. The reason for this disparity is the nature of the equipment powered by diesel engines. In underground metal and nonmetal mines, and surface mines,

diesel engines are widely used in all types of equipment — both the equipment used under the heavy stresses of production and the equipment used for support. By contrast, the great majority of the diesel usage in underground coal mines is in support equipment. For example, in underground metal and nonmetal mines, of the approximate 4,100 pieces of diesel equipment normally in use, about 1,800 units are for loading and hauling. By contrast, of the approximate 3,000 pieces of diesel equipment in underground coal, MSHA estimates that less than 50 pieces are for coal haulage. The largest diesel engines are used in surface operations; in underground metal and nonmetal mines, the size of the engine can be limited by the size of the shaft opening.

The type of equipment in the sectors also varies in another way that can affect particulate control directly, as well as constrain engine size. In underground coal, equipment that is used in face (production) areas of the coal mine must be MSHA-approved Part 36 permissible equipment. These locations are the areas where methane gas is likely to accumulate in higher concentrations. This includes the in-by section starting at the tailpiece (coal dump point) and all returns. Part 36 permissible equipment for coal requires the use of flame arresters on the intake and exhaust systems and surface temperature control to below 302°F. As discussed in more detail elsewhere in this notice, the cooler exhaust from these permissible pieces of equipment permits the direct installation of particulate filtration devices such as paper type filters that cannot be used directly on engines with hot exhaust. In addition, the permissibility requirements have had the effect of limiting engine size. This is because prior to MSHA's issuance of a diesel equipment rule in 1996, surface temperature control was done by water jacketing. This limited the horsepower range of the permissible engines because manufacturers have not expended resources to develop systems that could meet the 302°F surface temperature limitation using a water jacketed turbocharger.

In the future, larger engines may be used on permissible equipment, because the new diesel rule allows the use of new technologies in lieu of water jacketing. This new technology, plus the introduction of air-charged aftercoolers on diesel engines, may lead to the application of larger size diesel engines for underground coal production units. Moreover, if manufacturers choose to develop this type of technology for underground coal production units, the number of diesel production machines may increase.

There are also a few underground metal and nonmetal mines that are gassy, and these require the use of Part 36 permissible equipment. Permissible equipment in metal and nonmetal mines must be able to control surface temperatures to 400°F. MSHA estimates that there are currently less than 15 metal and nonmetal mines classified as gassy and which, therefore, must use Part 36 permissible equipment if diesels are utilized in areas where permissible equipment is required. These gassy metal and nonmetal mines have been using the same permissible engines and power packages as those approved for underground coal mines. (MSHA has not certified a diesel engine exclusively for a Part 36 permissible machine for the metal and nonmetal sector since 1985 and has certified only one permissible power package; however, that engine model has been retired and is no longer available as a new purchase to the industry). As a result, these mines are in a similar situation as underground coal mines: engine size (and thus dpm production of each engine) is more limited, and the exhaust is cool enough to add the paper type of filtration device directly to the equipment.

In nongassy underground metal and nonmetal mines, and in all surface mines, mine operators can use conventional construction equipment in their production sections without the need for modifications to the machines. Two examples are haulage vehicles and dump trucks. Some construction vehicles may be redesigned and articulated for sharper turns in underground mines; however, the engines are still the industrial type construction engines. As a result, these mines can and do use engines with larger horsepower. At the same time, since the exhaust is not cooled, paper-type filters cannot be added directly to this equipment without first adding a water scrubber, heat exchanger or other cooling device. The same is true for the equipment used in outby areas of coal mines, where the methane levels do not require the use of permissible equipment.

Future Demand and Emissions. MSHA expects there will be more diesel-powered equipment added to the Nation's mines. While other types of power sources for mining equipment are available, many in the mining industry believe that diesel power provides both safety and economic advantages over alternative power sources available today. Not many studies have been done recently on these contentions, and the studies which have been reviewed by MSHA do not clearly support this hypothesis; but as long as this view remains prevalent, continued growth is likely.

There are additional factors that could increase growth. As noted above, permissible equipment can now be designed in such a way to permit the use of larger engines, and in turn more use of diesel-powered production equipment in underground coal and other gassy mines. Moreover, state laws banning the use of diesel engines in the underground coal sector are under attack. As noted in section 8 of this part, until recently, three major underground coal states, Pennsylvania, West Virginia, and Ohio, have prohibited the use of diesel engines in underground coal mines. In late 1996, Pennsylvania passed legislation (PA Senate Bill No. 1643) permitting such use under conditions defined in the statute. West Virginia passed legislation lifting its ban as of May, 1997 (WV House Bill 2890), subject to regulations to be developed by a joint labor-industry commission. This makes the need to address safety and health concerns about the use of such engines very pressing.

In the long term, the mining industry's diesel fleet will become cleaner, even if the size of the fleet expands. This is because the old engines will eventually be replaced by new engines that will emit fewer particulates than they do at present. As discussed in Section 4 of this part, EPA regulations limiting the emissions of particulates and various gasses from new diesel engines are already being implemented for some of the smaller engines used in mining. Under a defined schedule, these new standards will soon apply to other new engines, including the larger engines used in mining. Moreover, over time, the emission standards which new engines will have to pass will become more and more stringent. Under international accords, imported engines are also likely to be cleaner: European countries have already established more stringent emission requirements (Needham, 1993; Sauerteig, 1995).

Based on the feasibility using the estimator, new engine technology, catalytic converters, and current ventilation should reduce dp levels down below the $400_{TC}um^3$. However, to reduce to the $160_{TC}um^3$ level, dp filters or cabs will still be needed on a certain number of equipment, based on mining conditions and diesel usage. The particulate index values listed for the MSHA approved engines provides information on the dp emissions and also can be used to help determine how low engine technology alone can lower

dp exposures. When filters are used, the cleaner engines allow the filters to last longer between change out or cleaning. The newer technology engines, especially the electronic models, also add the benefit of diagnostic control. The engines computer can inform the mechanic on the condition of the engine and warn the mechanic when an engine is in need of maintenance.

But MSHA believes that turnover of the mining fleet to these new, cleaner engines will take a very long time because the mining industry tends to purchase for mining use older equipment that is being discarded by other industries. In the meantime, the particulate burden on miners as a group is expected to remain at current levels or even grow.

(2) *Diesel Exhaust and Diesel Particulate.* The emissions from diesel engines are actually a complex mixture of compounds, containing gaseous and particulate fractions. The specific composition of the diesel exhaust in a mine will vary with the type of engines being used and how they are used. Factors such as type of fuel, load cycle, engine maintenance, tuning, and exhaust treatment will affect the composition of both the gaseous and particulate fractions of the exhaust. This complexity is compounded by the multitude of environmental settings in which diesel-powered equipment is operated. Elevation, for example, is a factor. Nevertheless, there are a few basic facts about diesel emissions that are of general applicability.

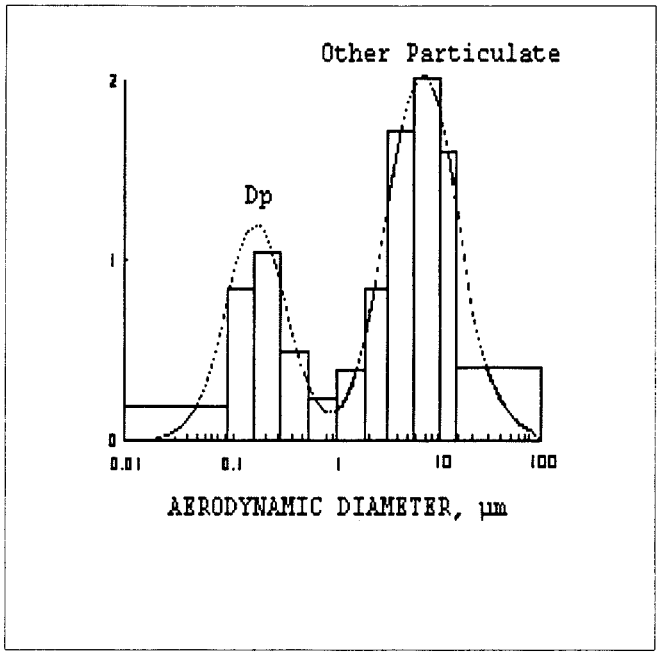
The gaseous constituents of diesel exhaust include oxides of carbon, nitrogen and sulfur, alkanes and alkenes (e.g., butadiene), aldehydes (e.g., formaldehyde), monocyclic aromatics (e.g., benzene, toluene), and polycyclic aromatic hydrocarbons (e.g., phenanthrene, fluoranthene). The oxides of nitrogen (NO_x) are worth particular mention because in the atmosphere they can precipitate into particulate matter. Thus, controlling the emissions of NO_x is one way that engine manufacturers can control particulate production indirectly. (See Section 4 of this part.)

The particulate fraction of diesel exhaust—what is known as soot—is made up of very small individual particles. Each particle consists of an insoluble, elemental carbon core and an adsorbed, surface coating of relatively soluble organic carbon (hydrocarbon) compounds. There can be up to 1,800 different organic compounds adsorbed onto the elemental carbon core. A portion of this hydrocarbon material is the result of incomplete combustion of fuel; however, the majority is derived from the engine lube oil. In addition, the diesel particles contain a fraction of non-organic adsorbed materials.

Diesel particles released to the atmosphere can be in the form of individual particles or chain aggregates (Vuk, Jones, and Johnson, 1976). In underground coal mines, more than 90% of these particles and chain aggregates are submicrometer in size—i.e., less than 1 micrometer (1 micron) in diameter. In underground metal and nonmetal mines, a greater portion of the aggregates may be larger than 1 micron in size because of the equipment used. Dust generated by mining and crushing of material—e.g., silica dust, coal dust, rock dust—is generally not submicrometer in size.

Figure II–1 shows a typical size distribution of the particles found in the environment of a mine that uses equipment powered by diesel engines (Cantrell and Rubow, 1992). The vertical axis represents relative concentration, and the horizontal axis the particle diameter. As can be seen, the distribution is bimodal, with dpm generally being well less than 1 µm in size and dust generated by the mining process being well greater than 1 µm. Because of their small size, even when diesel particles are present in large quantities, the environment might not be perceived as ''dusty''. Rather, the perception might be primarily of a vaporous, dirty and smelly ''soot'' or ''smoke''.

Figure II-1 -Typical distribution of dpm relative to distribution of other mining particulates.



The particulate nature of diesel soot has special significance for the mining community, which has a history of significant health and safety problems associated with dusts in the mining atmosphere. As a result of this long experience, the mining community is familiar with the standard techniques to control particulate concentrations. It knows how to use ventilation systems, for example, to reduce dust levels in underground mines. It knows how to water down particulates capable of being impacted by that approach, and to divert particulates away from where miners are actively working. Moreover, the mining community has long experience in the sampling and measurement of particulates—and in all the problems associated therewith. Miners and mine operators are very familiar with sampling devices that are worn by miners during normal work activities or placed in specific locations to collect dust. They understand the significance of sample integrity, the validity of laboratory analysis, and the concept of statistical error in individual samples. They know that weather and mine conditions can affect particulate production, as can changes in mine operations in an area of the mine. MSHA and the former Bureau of Mines have conducted considerable research into these topics. While the mining community has often argued over these points, and continues to do so, the sophistication of the arguments reflects the thorough familiarity of the mining community with particulate sampling and analysis techniques.

(3) *Methods Available to Measure DPM.* There are a number of methods which can measure dpm concentrations with reasonable accuracy when it is at high concentrations and when the purpose is exposure assessment. Measurements for the purpose of compliance determinations must be more accurate, especially if they are to measure compliance with a dpm concentration as low as 200 $\mu g/m^3$ or lower. It is with these considerations in mind that MSHA has carefully analyzed the available methods for measuring dpm.

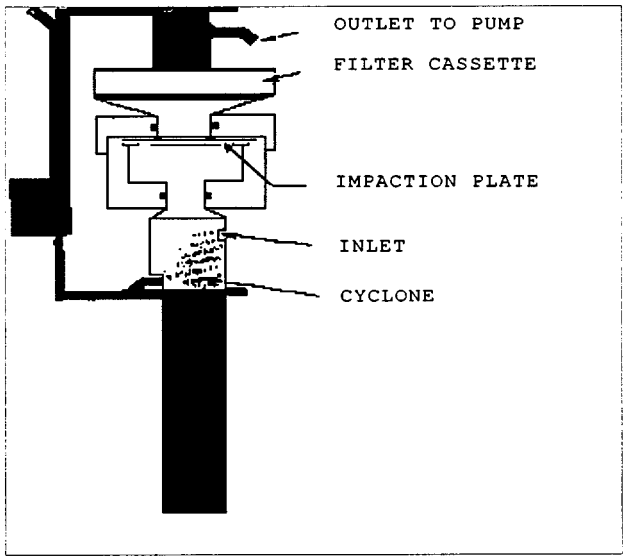
Comments. In its advanced notice of proposed rulemaking (ANPRM) in 1992, MSHA sought information on whether there are methodologies available for assessing occupational exposures to diesel particulate.

Some commenters argued that at that time there was no validated sampling method for diesel exhaust and there had been no valid analytical method developed to determine the concentration of diesel exhaust. According to the American Mining Congress, (AMC 1992), sampling methods commonly in use were prototypic in nature, were primarily being utilized by government agencies and were subject to interference. Commenters also stated that sampling instrumentation was not commercially available and that the analytical procedures could only be conducted in a limited number of laboratories. Several industry commenters submitted results of studies to support their position on problems with measuring diesel particulate in underground mines. A problem with sampler performance was noted in a study using prototype dichotomous sampling devices. Another commenter indicated that the prototype sampler developed by the former Bureau of Mines (discussed later in this section) for collecting the submicrometer respirable dust was difficult to assemble but easy to use, and that no problems were encountered. Problems associated with gravimetric analysis were also noted in assessing a short term exposure limit (STEL). Another commenter (Morton, 1992) indicated the cost of the sampling was prohibitive.

Another issue addressed by commenters to the 1992 ANPRM was ''Are existing sampling and exposure monitoring methods sufficiently sensitive, accurate and reliable?'' If not, what methods would be more suitable? Some commenters indicated their views that sampling methods had not been validated at that time for compliance sampling. They asserted that, depending on the level of measurement, both the size selective and elemental carbon techniques have some utility. The measurement devices give a precise measurement; however, because of interferants, corrections may need to be made to obtain an accurate measurement. Commenters also expressed the view that all of the sampling devices are sophisticated and require some expertise to assemble and analyze the results, and that MSHA should rely on outside agencies to evaluate and validate the sampling methods. An on-board sampler being developed by Michigan Technological University was the only other emission measurement technology discussed in the comments. However, this device is still in the development stage. Another commenter indicated that the standard should be based on the hazard and that the standard would force the development of measurement technology.

Submicrometer Sampling. The former Bureau of Mines (BOM) submitted information on the development of a prototype dichotomous impactor sampling device that separates and collects the submicrometer respirable particulate from the respirable dust sampled (See Figure II–2).

Figure II- 2
Personal Sampler For Submicrometer Particulate Sampling



The sampling device was designed to help measure dpm in coal mine environments, where, as noted in the last section of this part, nearly all the dpm is submicrometer (less than 1 micron) in size. In its submission to MSHA, the former BOM noted it had redesigned a prototype and had verified the sampler's performance through laboratory and field tests.

As used by the former BOM in its research, the submicrometer respirable particulate was collected on a pre-weighed filter. Post-weighing of the filter provides a measure of the submicrometer respirable particulate. The relative insensitivity of the gravimetric method only allows for a lower limit of detection of approximately 200 $\mu g/m^3$.

Because submicrometer respirable particulate can contain particulate material other than diesel particulate, measurements can be subject to interference from other submicrometer particulate material.

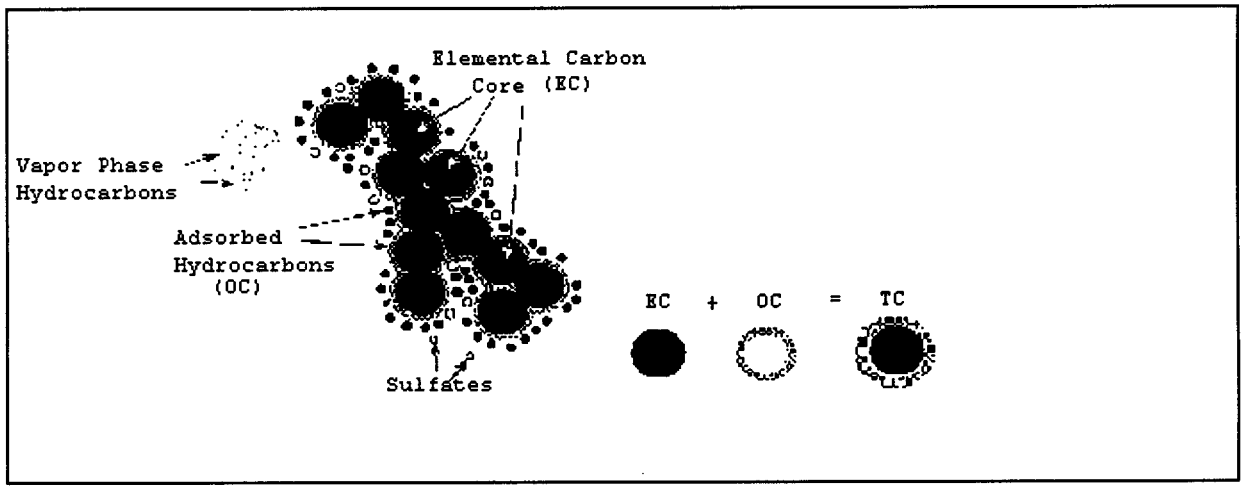
NIOSH Method 5040. In response to the ANPRM, NIOSH submitted information relative to the development of a sampling and analytical method to assess the diesel particulate concentration in an environment by measuring the amount of total carbon.

As discussed earlier in this part, diesel particulate consists of a core of elemental carbon (EC), adsorbed organic carbon (OC) compounds, sulfates, vapor phase hydrocarbons and traces of other compounds. The method developed by NIOSH provides for the collection of a sample on a quartz fiber filter. The filter is mounted in an open face filter holder that allows for the sample to be uniformly deposited on the filter surface. After sampling, a section of the filter is analyzed using a thermal-optical technique (Birch and Cary, 1996). This technique allows the EC and OC species to be separately identified and quantified. Adding the EC and OC species together provides a measure of the total carbon concentration in the environment. This is indicated diagrammatically in Figure II–3.

Studies have shown that the sum of the carbon (C) components (EC+OC) associated with dpm accounts for 80–85% of the total dpm concentration when low sulfur fuel is used (Birch and Cary, 1996). Since the TC:DPM relationship is consistent, it provides a method for determining the amount of dpm.

The method can detect as little as 1 μ g/m3 of TC. Moreover, NIOSH has investigated the method and found it to meet NIOSH's accuracy criterion (NIOSH, 1995); i.e., that measurements come within 25 percent of the true TC concentration at least 95 percent of the time.

Figure II-3
DPM components



NIOSH Method 5040 is directly applicable for the determination of diesel particulate levels in underground metal and nonmetal mines. The only potential sources of carbon in such mines would be organic carbon from oil mist and cigarette smoke. Oil mist may occur when diesel equipment malfunctions or is in need of maintenance.

MSHA, currently, has no data as to the frequency of occurrence or the magnitude of the potential interference from oil mist. However, during studies conducted by MSHA to evaluate different methods used to measure diesel particulate concentrations in underground mines, MSHA has not encountered situations where oil mist was found to be an interferant. Moreover, the Agency assumes that full operator implementation of maintenance standards to minimize dpm emissions (which are part of MSHA's proposed rule) will minimize any remaining potential for such interference. MSHA welcomes comments or data relative to oil mist interference. Cigarette smoke is under the control of operators, during sampling times in particular, and hence should not be a consideration.

While samples in underground metal and nonmetal mines could be taken with a submicrometer impactor, this could lead to underestimating the total amount of dpm present. This is because the fraction of dpm particles greater than 1 micron in size in the environment of noncoal mines can be as great as 20% (Vuk, Jones, and Johnson, 1976).

When sampling diesel particulate in coal mines, the NIOSH method recommends that a specialized impactor with a submicrometer cut point, such as the one developed by the former BOM, be used. Use of the submicron impactor minimizes the collection of coal particles, which have an organic carbon content. However, if 10% of coal particles are submicron, this means that up to 200 micrograms of submicrometer coal dust could be collected in face areas under current coal dust standards. Accordingly, for samples collected in underground coal mines, an adjustment may have to be made for interference from submicrometer coal dust; however, outby areas where little coal mine dust is present may not need such an adjustment.

NIOSH further recommends that in using its method in coal mines, the sample only be analyzed for the EC component. Measuring only the EC component ensures that only diesel particulate material is being measured in such cases. However, there are no established relationships between the concentration of EC and total dpm under various operating conditions. (The organic carbon component of dpm can vary with engine type and duty cycle; hence, the amount of whole dpm present for a measured amount of EC may vary). The Agency welcomes data and suggestions that would help it ascertain if and how measurements of submicrometer elemental carbon could realistically be used to measure dpm concentrations in underground coal mines.

Although NIOSH Method 5040 requires no specialized equipment for collecting a dpm sample, the sample would most probably require analysis by a commercial laboratory. MSHA recognizes that the number of laboratories currently capable of analyzing samples using the thermal-optical method is limited. However, there are numerous laboratories available that have the ability to perform a TC analysis without identifying the different species of carbon in the sample. Total carbon determinations using these laboratories would provide the mine with good information relative to the levels of dpm to which miners are potentially exposed. MSHA believes that once there is a need (e.g., as a result of the requirements of the proposed rule), more commercial laboratories will develop the capability to analyze dpm samples using the thermo-optical analytical method. Currently, the cost to analyze a submicrometer particulate sample for its TC content ranges from $30 to $50. This cost is consistent with costs associated with similar analysis of minerals such as quartz.

RCD Method. Another method, referred to as the Respirable Combustible Dust Method (RCD), has been developed in Canada for measuring dpm concentrations in noncoal mines. Respirable dust is collected with a respirable dust sampler consisting of a 10 millimeter nylon cyclone and a filter capsule containing a preweighed, preconditioned silver membrane filter. Samples are collected at a flow rate of 1.7 liters per minute. The respirable sample collected includes both combustible and noncombustible particulate matter.

Samples collected in accordance with the RCD method require analysis by a commercial laboratory. Total respirable dust is determined gravimetrically by weighing the filter after the sample is collected. After the sample has been subjected to a controlled combustion process at 400 °C for two hours, the remainder of the sample is weighed, and the amount of the particulate burned off determined by subtraction. This is the RCD. The combustible particulate matter consists of the soluble organic fraction, the EC core of the dpm, and any other combustible material collected. Thus, only a portion of the RCD is attributable to dpm. Oil mist and other combustible matter collected on the filter are interferants that can affect the accuracy of dpm concentration determination using this method. Because the mass of RCD is determined by weighing, the relative insensitivity of this method is similar to that obtained with the size selective gravimetric method (approximately 200 $\mu g/m^3$).

One commenter (Inco Limited) indicated experience with this method for identifying diesel particulate in their mining operations and suggested that this technique may be appropriate for determining eight hour exposures. Although this method was commonly used by the commenter for assessing dpm levels, concerns for the efficiency of the cyclones used to sample the respirable fraction of the particulate along with interference from oil mist were expressed.

Canada is now experimenting with the use of a submicron impactor with the RCD method.

Sampler Availability. The components for conducting sampling according to the submicrometer and the RCD methods are commercially available, as are those for NIOSH Method 5040, without a submicrometer particulate separator (impactor).

A reusable impactor can be manufactured by machine shops following the design specifications developed by the former U.S. Bureau of Mines (BOM IC 9324, 1992). The use of the size-selective samplers requires some training and laboratory time to prepare the impaction plate and assemble the unit. The cost to manufacture the size-selective units is approximately $35.

In addition, MSHA has requested NIOSH to develop and provide a commercially available disposable submicrometer particulate separator that would be used with existing personal respirable dust sampling equipment. The commercially available separator will be manufactured according to design criteria specified by NIOSH. It is anticipated that other sampling instrument manufacturers will develop commercial units once there is an established need for such a sampling device.

Use of Alternative Surrogates to Assess DPM Concentrations. A number of commenters on the ANPRM indicated that a number of surrogates were available to monitor diesel particulate. Of the surrogates suggested, the most desirable to use would be carbon dioxide because of its ease of measurement. In 1992 the former Bureau of Mines (BOM IC 9324, 1992) reported on research being conducted to investigate the use of CO_2 as a surrogate to assess mine air quality where diesel equipment is utilized. However, because the relationship between CO_2 and other exhaust components depends on the number, type and duty cycle of the engines in operation, no acceptable measurement method based on the use of CO_2 has been developed.

(4) *Reducing Soot at the Source—Engine Standards.* One way to limit diesel particulate emissions is to redesign diesel engines so they produce fewer pollutants. Engine manufacturers around the world are being pressed to do this pursuant to environmental regulations. These cleaner engine requirements are sometimes referred to as tailpipe standards because compliance is measured by checking for pollutants as the exhaust emerges from the engine's tailpipe—before any aftertreatment devices. This section reviews developments in this area, and explains the relationship between the environmental standards on new engines and MSHA engine ''approval'' requirements.

The Clean Air Act and Mobile Sources. The Clean Air Act authorized the Federal Environmental Protection Agency (EPA) to establish nationwide standards for new mobile vehicles, including those powered by diesel engines. These standards are designed, over time, to reduce the volume of certain harmful atmospheric pollutants emanating from mobile sources: particulate matter, nitrogen oxides (which as previously noted, can result in the generation of particulates in the atmosphere), hydrocarbons and carbon monoxide.

California has its own standards. New engines destined for use in California must meet standards under the law of that State. The standards are issued and administered by the California Air Resources Board (CARB). In recent years, EPA and CARB have worked together with industry in establishing their respective standards, so most of them are identical.

Regulatory responsibility for implementation of the Clean Air Act is vested in the Office of Mobile Sources (OMS), part of the Office of Air and Radiation of the EPA. Some of the discussion which follows was derived from materials which can be accessed from the OMS home page on the World Wide Web at (http://www.epa.gov/docs/omswww/omshome.htm). Information about the CARB standards may be found at the home page of that agency at (http://www.arbis.arb.ca.gov/homepage.htm).

Engines are generally divided into three broad categories for purposes of environmental emissions standards, in accordance with the primary use for which the type of engine is designed: (1) cars and light duty trucks (i.e., to power passenger transport); (2) heavy duty trucks (i.e., to power over-the-road hauling); and (3) nonroad vehicles (i.e., to power small equipment, construction equipment, locomotives and other non-highway uses). Engines used in mining equipment are not regulated as a separate category in this regard, but engines in all three categories are engaged in mining work, from generator sets to pickup trucks to huge earth movers and haulers.

New vs. Used. The environmental tailpipe requirements are applicable only to new engines. In the mining industry, used engines are often purchased; and, of course, the existing fleet consists of engines that are not new. Thus, although these tailpipe requirements will bring about gradual reduction in the overall contribution of diesel pollution to the atmosphere, the beneficial effects on mining atmospheres may require a longer timeframe, absent actions to accelerate the turnover of mining fleets to the cleaner engines.

In underground coal mining, MSHA has already taken actions which will have such an effect on the fleet. The diesel equipment rule issued in late 1996 requires that by November 25, 1999, all diesel equipment used in underground coal mines use an approved engine and maintain that engine in approved condition (30 CFR 75.1907). MSHA expects this will result in the replacement of about 47 percent of the diesel engines now in the underground coal mine inventory with engines that emit fewer pollutants. The timeframe permitted for the turnover was based upon MSHA's estimates of the useful life in an underground mining environment of the ''outby'' equipment involved.

Technology-Forcing Schedule. As noted above, the exact environmental tailpipe requirements which a new

diesel engine must meet varies with the date of manufacture. The Clean Air Act, which was most recently amended in 1990, establishes a schedule for the reduction of particular pollutants from mobile sources. EPA and CARB, working closely with the diesel engine industry, have endeavored to turn this into a regulatory schedule that forces technology while taking into account certain technological realities (e.g., actions taken to reduce particulate emissions may increase NO_X emissions, and vice versa). Existing EPA regulations for on-highway engines (both for light duty vehicles and heavy duty trucks) and non-road engines schedule the tailpipe standards that must be met for the rest of this century. Agreements between EPA, CARB and the engine industry are now leading to proposed rules for engine standards to be met during the early part of the next century. These standards will be stricter and will lower the levels of diesel emissions.

Light-Duty Engines. The current regulations on light duty vehicle engines (cars and passenger trucks) were set in 1991 (56 FR 25724). EPA is currently considering proposing new standards for this category. Pursuant to a specific requirement in the Clean Air Act Amendments of 1990, EPA is to study and report to Congress on whether further reductions in this category should be pursued. A public workshop was held in the Spring of 1997. EPA plans provide for a draft report to be available for public comment by Spring of 1998, and a final report completed by July 1998, although a notice of citizen suit has been filed to speed the process. Up-to-date information about the progress of this initiative can be found at the home page for the study (http://www.epa.gov/omswww/tr2home.htm).

On-highway Heavy Duty Truck Engines. The first phase of the on-highway standards for heavy duty diesel engines was applicable to engines manufactured in 1985 (40 CFR 86.085–11). For the first time, separate standards for nitrogen oxide (NO_X) and hydrocarbons (HC) were established. The nitrogen oxides and hydrocarbons are precursors of ground level ozone, a major component of smog. A number of hydrocarbons are also toxic, while nitrogen oxides contribute to the formation of acid rain and can, as previously noted, precipitate into particulate matter. In 1988, a specific standard limiting particulate matter emitted from the heavy duty on-highway diesel engines went into effect (40 CFR 86.088–11). The Clean Air Act Amendments and the regulations provided for phasing in even tighter controls on NO_X and particulate matter through 1998. Reductions in NO_X took place in 1990 and 1991 and are to occur again in 1998, and reductions in PM took place in 1991 and 1994. Certain types of trucks in particularly polluted urban areas must reach even tighter requirements.

On October 21, 1997, EPA issued a new rule for on-highway engines that will take effect for engine model years starting in 2004 (62 FR 54693). The rule establishes a combined requirement for NO_X and HC. The combined standard is set at 2.5gm/bhp-hr, which includes a cap of 0.5gm/bhp-hr for HC. Prior to the rule, the EPA, CARB, and the engine manufacturers signed a Statement of Principles (SOP) that agreed on harmonization of the emission standards and the feasible levels that could be achieved. The rule allows manufacturers a choice of two combinations of NO_X and HC, with a net expected reduction in NO_X emissions of 50%. The rule does not require further reductions in tailpipe emissions of PM.

Non-road Engines. Of particular interest to the mining community is the EPA's regulatory work on the standards that will be applicable to non-road engines, for these include the engines used in the heaviest mining equipment.

The 1990 Clean Air Act Amendments specifically directed EPA to study the contribution of nonroad engines to air pollution, and regulate them if warranted. In 1991, EPA released a study that documented higher than expected emission levels across a broad spectrum of nonroad engines and equipment (EPA Fact Sheet, EPA420–F–96–009, 1996). In response, EPA initiated several regulatory programs. One of these set emission standards for land-based nonroad engines greater than 50 horsepower (other than for rail use). Limits are established for tailpipe emissions of hydrocarbons, carbon monoxide, NO_X, and dpm. The limits are phased in from 1996 to 2000: starting in 1996 with nonroad engines from 175 to 750 hp, then smaller engines, and by 2000 the larger nonroad engines. Moreover, in February 1997, restrictions on nonroad engines for locomotives were proposed (62 FR 6366).

In September 1996, EPA announced another Statement of Principles (SOP) with the engine industry and CARB on new rounds of restrictions for non-road engines to begin to take place in this century. This led in September 1997 to a proposed rule setting standards for almost all types of engines in this category manufactured after 1999–2006 (the actual year depends on the category) (62 FR 50151). The applicable standards for an engine category would be gradually tightened through three tiers. They would set a cap on the combined NO_X and HC (similar to the on-highway), set CO standards, and lower standards on PM. The implementation of the final tier of the proposed reductions is subject to a technology review in 2001 to ensure that the appropriateness of the levels to be set is feasible.

Will the Diesel Engine Industry Meet Mining Industry Requirements? Concern has been expressed from time to time that the diesel industry might not be able to meet the ever tightening standards on tailpipe emissions, and might, therefore, stop producing certain engines needed by the mining community or other industries (Gushee, 1995). To date, however, such concerns have not been realized. The fact that the most recent regulations have been developed through a consensus process with the engine industry, and that the non-road plan includes a scheduled technology review to ensure the proposed emission standards can really be achieved, suggests that although the EPA standards are technology forcing, diesel engines will continue to be available to meet the needs of the mining community for the foreseeable future. In addition, the nonroad engine agreement with the industry calls for development of a separate research agreement involving stakeholders in the exploration of technologies that can achieve very low emission levels of NO_X and PM ''while preserving performance, reliability, durability, safety, efficiency, and compatibility with nonroad equipment'' (EPA420–F–96–015, September 1996). Also, Vice President Gore has recently noted that the Administration is committed to emissions research that would clean up both the diesels currently on the road, as well as enabling these engines an opportunity to compete as a new generation of vehicles is developed that are far more efficient than today's vehicles (White House Press Release, July 23, 1997). It is always possible, of course, that some new technological problems could emerge that could impact diesel engine availability—e.g., confirmation that some of the newer engines produce high levels of ''nanoparticles'' particulates and that such emissions pose some sort of a health problem. Research of nanoparticles and their health effects is currently a topic of investigation (Bagley et al., 1996).

A related question has been whether the costs of the ''high-tech'' diesel engines will make them unaffordable in practice to the mining community.

MSHA believes the new engines will be affordable. The fact that the engine industry has agreed to the new standards, and has some assurance of what the applicable standards will be for the foreseeable future, should help keep costs in check.

In theory, underground mines can control costs by purchasing certain types of new engines that do not have to meet the new EPA standards. The rules on heavy duty on-highway truck engines were not applied to engines intended to be used in underground coal mines (59 FR 31336), and the new proposed rules on nonroad vehicles would likewise not be mandatory for engines intended for any underground mining use. In practice, however, it is not likely that engine manufacturers will produce special engines once they switch over their production lines to meet the new EPA standards, because there are few types and sizes of engines in production for which the mining community is the major market. Moreover, the larger engines (above 750 hp) are specifically covered by the EPA nonroad rules (*Engine Manufacturers Assn.* v. *EPA*, 88 F.3d 1075, 319 U.S. App.D.C. 12 (1996).

MSHA Approved Engines. Acting under its own authority to protect miner safety and health, MSHA requires that diesel engines used in certain types of mining operations be ''approved'' as meeting certain tailpipe standards.

In some ways, the standards are akin to those of EPA and CARB. For example, MSHA, CARB and EPA generally use the same tests to check emissions. MSHA uses a steady state, 8-mode test cycle, the same as EPA and CARB use to test engines designed for use in off-road equipment; however, EPA uses a different, transient test for on-highway engines.

But to be approved by MSHA, an engine does not have to be as clean as the newer diesel engines, every generation of which must meet ever tighter EPA and CARB tailpipe standards. Approval of an engine by MSHA merely ensures that the tailpipe emissions from that engine meet certain basic standards of cleanliness—cleaner than the engines which many mines continue to use.

The MSHA approval rules were revised in 1996 (as part of the 1996 rule on the use of diesel equipment in underground coal mines) to provide the mining community with additional information about the cleanliness of the emissions emerging from the tailpipe of various engines. Specifically, the agency now requires that a particulate index (PI) be reported as part of MSHA's engine approval. This index permits operators to evaluate the contribution of a proposed new addition to the fleet to the mine's particulate concentrations.

There is no requirement that approved engines meet a particular PI; rather, the requirement is for information purposes only. In its 1996 rulemaking addressing diesel equipment in underground coal mines, MSHA explicitly deferred until this rulemaking the question of whether to require engines used in mining environments to meet a particular PI (61 FR 55420–21, 55437). The Agency has decided not to take that approach, for the reasons discussed in Part V of this preamble.

(5) *Limiting the Public's Exposure to Soot—Ambient Air Quality Standards.* Pursuant to the Clean Air Act, EPA is responsible for setting air pollution standards to protect the public from toxic air contaminants. These include standards to limit exposure to particulate matter. The pressures to comply with these limits have an impact upon the mining industry, which contributes various types of particulate matter into the environment during mining operations, and a special impact on the coal mining industry whose product is used extensively in emission-generating power facilities. But those standards hold interest for the mining community in other ways as well, for underlying some of them is a large body of evidence on the harmful effects of airborne particulate matter on human health. Increasingly, that evidence has pointed toward the risks of the smallest particulates—including the particles generated by diesel engines.

This section provides an overview of EPA rulemaking on particulate matter. For more detailed information, commenters are referred to ''The Plain English Guide to the Clean Air Act,'' EPA 400–K–93–001, 1993, to the ''Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information'', EPA–452/R–96–013, 1996; and, on the latest rule, to EPA Fact Sheets, July 17, 1997. These and other documents are available from EPA's Web site.

Background. Air quality standards involve a two-step process: standard setting by EPA, and implementation by each State.

Under the law, EPA is specifically responsible for reviewing the scientific literature concerning air pollutants, and establishing and revising National Ambient Air Quality Standards (NAAQS) to minimize the risks to health and the environment associated with such pollutants. It is supposed to do a review every five years. Feasibility of compliance by pollution sources is not supposed to be a factor in establishing NAAQS. Rather, EPA is required to set the level that provides ''an adequate margin of safety'' in protecting the health of the public.

Implementation of each national standard is the responsibility of the states. Each must develop a state implementation plan that ensures air quality in the state consistent with the ambient air quality standard. Thus, each state has a great deal of flexibility in targeting particular modes of emission (e.g., mobile or stationary, specific industry or all, public sources of emissions vs. private-sector sources), and in what requirements to impose on polluters. However, EPA must approve the state plans pursuant to criteria it establishes, and then take pollution measurements to determine whether all counties within the state are meeting each ambient air quality standard. An area not meeting an NAAQS is known as a ''nonattainment area''.

TSP. Particulate matter originates from all types of stationary, mobile and natural sources, and can also be created from the transformation of a variety of gaseous emissions from such sources. In the context of a global atmosphere, all these particles are mixed together, and both people and the environment are exposed to a ''particulate soup'' the chemical and physical properties of which vary greatly with time, region, meteorology, and source category. The first ambient air quality standards dealing with particulate matter did not distinguish among these particles. Rather, the EPA established a single NAAQS for ''total suspended particulates'', known as ''TSP.'' Under this approach, the states could come into compliance with the ambient air requirement by controlling any type or size of TSP. As long as the total TSP was under the NAAQS—which was established based on the science available in the 1970s—the state met the requirement.

PM_{10}. When the EPA completed a new review of the scientific evidence in the mid-eighties, its conclusions led it to revise the particulate NAAQS to focus more narrowly on those particulates less than 10 microns in diameter, or PM_{10}. The standard issued in 1987 contained two components: an annual average limit of 150 $\mu g/m^3$, and a 24-hour limit of 50 $\mu g/m^3$. This new standard required the states to reevaluate their situations and, if they had areas that exceeded the new PM_{10} limit, to refocus their compliance plans on reducing those particulates smaller than 10 microns in size. Sources of PM_{10} include power plants, iron and steel production, chemical and wood products

manufacturing, wind-blown and roadway fugitive dust, secondary aerosols and many natural sources.

Some state implementation plans required surface mines to take actions to help the state meet the PM_{10} standard. In particular, some surface mines in Western states were required to control the coarser particles—e.g., by spraying water on roadways to limit dust. The mining industry has objected to such controls, arguing that the coarser particles do not adversely impact health, and has sought to have them excluded from the EPA ambient air standards (Shea, 1995; comments of Newmont Gold Company, March 11, 1997, EPA docket number A–95–54, IV–D–2346).

$PM_{2.5}$. The next scientific review was completed in 1996, following suit by the American Lung Association and others. A proposed rule was published in November of 1996, and, after public hearings and review by the Office of the President, a final rule was promulgated on July 18, 1997 (62 FR 38651).

The new rule further modifies the standard for particulate matter. Under the new rule, the existing national ambient air quality standard for PM_{10} remains basically the same—an annual average limit of 150 $\mu g/m^3$ (with some adjustment as to how this is measured for compliance purposes), and a 24-hour ceiling of 50 $\mu g/m^3$. In addition, however, a new NAAQS has now been established for ''fine particulate matter'' that is less than 2.5 microns in size. The $PM_{2.5}$ annual limit is set at 15 $\mu g/m^3$, with a 24-hour ceiling of 65 $\mu g/m^3$.

The basis for the $PM_{2.5}$ NAAQS is a new body of scientific data suggesting that particles in this size range are the ones responsible for the most serious health effects associated with particulate matter. The evidence was thoroughly reviewed by a number of scientific panels through an extended process. (A chart of the scientific review process is available on EPA's web site—http://ttnwww.rtpnc.epa.gov/naaqspro/pmnaaqs.gif). The proposed rule resulted in considerable press attention, and hearings by Congress, in which this scientific evidence was further discussed. Following a careful review, President Clinton announced his concurrence with the rulemaking in light of the scientific evidence of risk. However, the implementation schedule for the rule is long enough so that the next review of the science is scheduled to be completed before the states are required to meet the new NAAQS for $PM_{2.5}$—hence, adjustment of the standard is still possible before implementation.

Implications for the Mining Community. As noted earlier in this part, diesel particulate matter is mostly less than 1.0 micron in size. It is, therefore, a fine particulate. The body of evidence of human health risk from environmental exposure to fine particulates must, therefore, be considered in assessing the risk of harm to miners of occupational exposure to one type of fine particulate—diesel particulate. MSHA has accordingly done so in its risk assessment (see Part III of this preamble).

(6) *Controlling Diesel Particulate Emissions in Mining—a Toolbox.* Efforts to control diesel particulate emissions have been under review for some time within the mining community, and accordingly, there is considerable practical information available about controls—both in general terms, and with respect to specific mining situations.

Workshops. In 1995, MSHA sponsored three workshops ''to bring together in a forum format the U.S. organizations who have a stake in limiting the exposure of miners to diesel particulate (including) mine operators, labor unions, trade organizations, engine manufacturers, fuel producers, exhaust aftertreatment manufacturers, and academia.'' (McAteer, 1995). The sessions provided an overview of the literature and of diesel particulate exposures in the mining industry, state-of-the-art technologies available for reducing diesel particulate levels, presentations on engineering technologies toward that end, and identification of possible strategies whereby miners' exposure to diesel particulate matter can be limited both practically and effectively. One workshop was held in Beckley, West Virginia on September 12 and 13, and the other two were held on October 6, and October 12 and 13, 1995, in Mt Vernon, Illinois and Salt Lake City, Utah, respectively. A transcript was made. During a speech early the next year, the Deputy Assistant Secretary for MSHA characterized what took place at these workshops:

> The biggest debate at the workshops was whether or not diesel exhaust causes lung cancer and whether MSHA should move to regulate exposures. Despite this debate, what emerged at the workshops was a general recognition and agreement that a health problem seems to exist with the current high levels of diesel exhaust exposure in the mines. One could observe that while all the debate about the studies and the level of risk was going on, something else interesting was happening at the workshops: one by one miners, mining companies, and manufacturers began describing efforts already underway to reduce exposures. Many are actively trying to solve what they clearly recognize is a problem. Some mine operators had switched to low sulfur fuel that reduces particulate levels. Some had increased mine ventilation. One company had tried a soy-based fuel and found it lowered particulate levels. Several were instituting better maintenance techniques for equipment. Another had hired extra diesel mechanics. Several companies had purchased electronically controlled, cleaner, engines. Another was testing a prototype of a new filter system. Yet another was using disposable diesel exhaust filters. These were not all flawless attempts, nor were they all inexpensive. But one presenter after another described examples of serious efforts currently underway to reduce diesel emissions. (Hricko, 1996).

Toolbox. In March of 1997, MSHA issued, in draft form, a publication entitled ''Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox''. The draft publication was disseminated by MSHA to all underground mines known to use diesel equipment and posted on MSHA's Web site. Following comment, the Toolbox was finalized in the Fall of 1997 and disseminated. For the convenience of the mining community, a copy is appended to the end of this document.

The material on controls is organized as a ''Toolbox'' so that mine operators have the option of choosing the control technology that is most applicable to their mining operation for reducing exposures to dpm. The Toolbox provides information about nine types of controls that can reduce dpm emissions or exposures: low emission engines; fuels; aftertreatment devices; ventilation; enclosed cabs; engine maintenance; work practices and training; fleet management; and respiratory protective equipment.

The Estimator. MSHA has developed a model that can help mine operators evaluate the effect of alternative controls on dpm concentrations. The model is in the form of a template that can be used on standard computer spreadsheet programs; as information about a new combination of controls is entered, the results are promptly displayed. A complete description of this model, referred to as ''the Estimator,'' and several examples, are presented in Part V of this preamble. MSHA intends to make this model widely available to the mining community, and hopes to receive comments in connection with this rulemaking based on the results of estimates conducted with this model.

History of diesel aftertreatment devices in mining. For many years, the majority of the experience has been with the use of oxidation catalytic converters (OCCs), but in more recent years both

ceramic and paper filtration systems have also been used more widely.

OCCs began to be used in underground mines in the 1960's to control carbon monoxide, hydrocarbons and odor (Haney, Saseen, Waytulonis, 1997). That use has been widespread. It has been estimated that more than 10,000 OCCs have been put into the mining industry over the years (McKinnon, dpm Workshop, Beckley, WV, 1995).

When such catalysts are used in conjunction with low sulfur fuel, there is a reduction of up to 90 percent of carbon monoxide, hydrocarbons and aldehyde emissions, and nitric oxide can be transformed to nitrogen dioxide. Moreover, there is also an approximately 20 percent reduction in diesel particulate mass. The diesel particulate reduction comes from the elimination of the soluble organic compounds that, when condensed through the cooling phase in the exhaust, will attach to the elemental carbon cores of diesel particulate. Unfortunately, this effect is lost if the fuel contains more than 0.05 percent sulfur. In such cases, sulfates can be produced which ''poison'' the catalyst, severely reducing its life. With the use of low sulfur fuel, some engine manufacturers have certified diesel engines with catalytic converter systems to meet EPA requirements for lower particulate levels (see Section 4 of this part).

The particulate trapping capabilities of some OCCs are even higher. In 1995, the EPA implemented standards requiring older buses in urban areas to reduce the dpm emissions from rebuilt bus engines (40 CFR 85.1403). Aftertreatment manufacturers developed catalytic converter systems capable of reducing dpm by 25%. Such systems are available for larger diesel engines common in the underground metal and nonmetal sector.

Other types of aftertreatment devices capable of more significant reductions in particulate levels began to be developed for commercial applications following EPA rules in 1985 limiting diesel particulate emissions from heavy duty diesel engines. The wall flow type ceramic honeycomb diesel particulate filter system was initially the most promising approach (SAE, SP–735, 1988). However, due to the extensive work performed by the engine manufacturers on new technological designs of the diesel engine's combustion system, and the use of low sulfur fuel, particulate traps turned out to be unnecessary to comply with the EPA standards of the time.

While this work was underway, efforts were also being made to transfer this aftertreatment technology to the mining industry. The former Bureau of Mines investigated the use of catalyzed diesel particulate filters in underground mines in the United States (BOM, RI–9478, 1993). The investigation demonstrated that filters could work, but that there were problems associated with their use on individual unit installations, and the Bureau made recommendations for installation of ceramic filters on mining vehicles. But as noted by one commenter at one of the MSHA workshops in 1995, ''while ceramic filters give good results early in their life cycle, they have a relatively short life, are very expensive and unreliable.'' (Ellington, dpm Workshop, Salt Lake City, UT, 1995).

Canadian mines also began to experiment with ceramic traps in the 1980's with similar results (BOM, IC 9324, 1992). Work in Canada today continues under the auspices of the Diesel Emission Evaluation Program (DEEP), established by the Canadian Centre for Mineral and Energy Technology in 1996 (DEEP Plenary Proceedings, November 1996). The goals of DEEP are to: (1) evaluate aerosol sampling and analytical methods for dpm; and (2) evaluate the in-mine performance and costs of various diesel exhaust control strategies.

Work with ceramic filters in the last few years has led to the development of the ceramic fiber wound filter cartridge (SAE, SP–1073, 1995). The ceramic fiber has been reported by the manufacturer to have dpm reduction efficiencies up to 80 percent. This system has been used on vehicles to comply with German requirements that all diesel engines used in confined areas be filtered. Other manufacturers have made the wall flow type ceramic honeycomb dpm filter system commercially available to meet the German standard. In the case of some engines, a choice of the two types is available; but depending upon horsepower, this may not always be the case.

In the early 1990's, MSHA worked with the former Bureau of Mines and a filter manufacturer to successfully develop and test a pleated paper filter for wet water scrubber systems of permissible diesel powered equipment. The dpm reduction from these filters has been determined in the field by the former BOM to be up to 95% (BOM, IC 9324). The same type of filter has been used in recently developed dry systems for permissible machines, with reported laboratory reductions in dpm of 98% (Paas, dpm Workshop, Beckley WV, 1995).

ANPRM Comments. The ANPRM requested information about several kinds of work practices that might be useful in reducing dpm concentrations. These comments were provided well before the workshops mentioned above, and before MSHA issued its diesel equipment standard for underground coal mines, and are thus somewhat dated. But, solely to illustrate the range of comments received, the following sections review the comments concerning certain work practices—fuel type, fuel additives, and maintenance practices.

Type of Diesel Fuel Required. It has been well established that the quality of diesel fuel influences emissions. Sulfur content, cetane number, aromatic content, density, viscosity, and volatility are interrelated fuel properties which can influence emissions. Sulfur content can have a significant effect on diesel emissions.

Use of low sulfur diesel fuel reduces the sulfate fraction of dpm matter emissions, reduces objectionable odors associated with diesel exhaust and allows oxidation catalysts to perform properly. The use of low sulfur fuel also reduces engine wear and maintenance costs. Fuel sulfur content is a particularly important parameter when the fuel is used in low emission diesel engines. Low sulfur diesel fuel is available nationwide due to EPA regulations (40 CFR Parts 80 and 86). In MSHA's ANPRM, information was requested on what reduction in concentration of diesel particulate can be achieved through the use of low sulfur fuel. Information was also solicited as to whether the use of low sulfur fuel reduces the hazard associated with diesel emissions.

Responses from commenters stated that there would be a positive reduction in particulate with the use of low sulfur fuel. One commenter stated that the brake specific exhaust emissions (grams/brake horsepower-hour) of particulate would decrease by about 0.06 g/bhp-hr for a fuel sulfur reduction of 0.25 weight percent sulfur. The particulate reduction effect is proportional to the change in sulfur content. Another commenter stated that a typical No. 2 diesel fuel containing 0.25 percent weight sulfur will include 1 to 1.6 grams of sulfate particulate per gallon of fuel consumed. A fuel containing 0.05 percent weight sulfur will reduce sulfate particulate to 0.2–0.3 grams per gallon of fuel consumed, an 80 percent reduction.

In responding to the question on whether reducing the sulfur content of the fuel will reduce the health hazard associated with diesel emissions,

several commenters stated that they knew of no evidence that sulfur reduction reduces the hazard of the particulate. MSHA also is not aware of any data supporting the proposition that reducing the sulfur content of the fuel will reduce the health hazard associated with diesel emissions. However, in the preamble to the final rule for the EPA requirement for the use of low sulfur fuel, EPA stated that there were a number of benefits which could be attributed to lowering the sulfur content of diesel fuel. The first area was in exhaust aftertreatment technology. Reductions in fuel sulfur content will result in small reductions in sulfur compounds being emitted. This will cause the whole particulate concentration from the engine to be reduced. However, the number of carbon particles are is not reduced, therefore, the total carbon concentration would be the same.

The major benefit of using low sulfur fuel is that the reduction of sulfur allows for the use of some aftertreatment devices such as catalytic converters, and catalyzed particulate traps which were prohibited with fuels of high sulfur content (greater than 0.05 percent sulfur). The high sulfur content led to sulfate particulate that when passed through the catalytic converter or catalyzed traps was changed to sulfuric acid when the sulfates came in contact with water vapor. Using low sulfur fuel permits these devices to be used.

The second area of benefits that the EPA noted was that of reduced engine wear with the use of low sulfur fuel. Reducing engine wear will help maintain engines in their near manufactured condition that would help limit increases in particulate matter due to lack of maintenance or age of the engine.

Other questions posed in the ANPRM requested information concerning the differences in No. 1 and No. 2 diesel fuel regarding particulate formation; the current sulfur content of diesel fuel used in mines; and when would 0.05 percent sulfur fuel be available to the mining industry.

In response to those questions, commenters stated that a difference in No. 1 and No. 2 fuel regarding particulate formation would be that No. 1 fuel typically has less sulfur than No. 2 fuel and would therefore be expected to produce less particulate. Also, the No. 1 fuel has a lower density, boiling range and aromatic content and a higher cetane number. All of these fuel property differences tend to cause lower particulate emissions.

Commenters also stated that the sulfur content of fuels commercially available for diesel-powered equipment can vary from nearly zero to 1 percent. The national average sulfur content for commercial No. 2 diesel fuel is approximately 0.25 percent. One commenter stated that sulfur content varied from region to region and the National Institute of Petroleum and Energy Research survey could be used to get the answers for specific regions.

Commenters noted that low sulfur fuel, less than 0.05 percent sulfur, would be available for on-highway use as mandated by the EPA by October 1993. Also, California requires the statewide availability of 0.05 percent sulfur fuel for all diesel engine applications by the same date. Although the EPA mandate ensures that low sulfur fuel will be available throughout the nation, commenters indicated the availability for off-road and mining application was uncertain at that time.

The ANPRM also requested information on the differences in the per gallon costs among No. 1, No. 2 and 0.05 percent sulfur fuel; how much fuel is used annually in the mining industry; and what would be the economic impact on mining of using 0.05 percent sulfur fuel. In response, commenters stated that No. 1 fuel typically costs the user 10 to 20 percent more than does No. 2 fuel. They also stated that the price of 0.05 percent sulfur fuel will eventually be set by the competitive market conditions. No information was submitted for accurately estimating fuel usage costs to the industry. The economic impact on the mining industry of using 0.05 percent fuel will vary greatly from mine to mine. Factors influencing that cost are a mine's dependence on diesel powered equipment, the location of the mine and existing regulation. Mines relying heavily on diesel equipment will be most impacted.

Another commenter stated that the price for 0.05 percent fuel is forecast to average about 2 cents per gallon higher than the price for typical current No. 2 fuel. Kerosene and No. 1 distillate are forecast as 2 to 4 cents per gallon above 0.05 percent fuel and 4 to 6 cents above current No. 2 fuel. A recent census of mining and manufacturing dated 1987 showed mining industry energy consumption from all sources to total 1968.4 trillion BTU per year. Coal mining alone used 9.96 million barrels annually of distillate, at a cost of 258.1 million dollars. Included in these quantities was diesel fuel for surface equipment and vehicles at or around the mine site. The commenter also stated that applying a cost increase of 2 cents per gallon to the total industry distillate consumption would increase annual fuel costs by $24.3 million. For coal mining only, the cost increase would be $8.4 million annually.

While MSHA does not have an opinion on the accuracy of the information received in this regard, it is in any event dated. Since the time that the ANPRM was open, the availability of low sulfur fuel has become more common. Comments received at MSHA's Diesel Workshops indicate that low sulfur fuel is readily available and that all that is needed to obtain it is to specify the desired fuel quality on the purchase order. The differences in the fuel properties of No. 1 and No. 2 fuel are consistent with specifications provided by ASTM and other literature information concerning fuel properties.

Fuel Additives. Information relative to fuel additives was requested in MSHA's ANPRM. The ANPRM requested information on the availability of fuel additives that can reduce dpm or additives being developed; what diesel emissions reduction can be expected through the use of these fuel additives; the cost of additives and advantages to their use; and will these fuel additives introduce other health hazards. One commenter stated that cetane improvers and detergent additives can reduce dpm from 0 to 10 percent. The data, however, does not indicate consistent benefits as in the case with sulfur reduction. Oxygenate additives can give larger benefits, as with methanol, but then the oxygenate is not so much an additive as a fuel blend. Another commenter stated the cost depended on the price and concentration of the additive. This commenter estimated the cost to be between three and seven cents per gallon of fuel.

Another commenter stated that some additives are used for reducing injector tip fouling, other alternative additives also are offered specifically for the purpose of reducing smoke or dpm such as organometallic compounds, i.e., copper, barium, calcium, iron or platinum; oxygenate supplements containing alcohols or peroxides; and other proprietary hydrocarbons. The commenter did not quantify the expected reductions in dpm.

The former Bureau of Mines commented on an investigation of barium-based, manganese based, and ferrocene fuel additives. Details of the investigation are found in the literature (BOM, IC 9238, 1990). In general, fuel additives are not widely used by the mining industry to reduce dpm or to reduce regeneration temperatures in ceramic particulate filters. Research has shown aerosol reductions of about 30 percent without significant adverse impacts although new pollutants

derived from the fuel additive remain a question.

One commenter stated that a cetane improver and detergent additives should not exceed 1 cent per gallon at the treat rates likely to be used. The use of oxygenates depends on which one and how much but would be perhaps an order of magnitude higher than the use of a cetane improver. One commenter also added that any fuel economy advantages would be very small.

In response to the creation of a health hazard when using additives, one commenter stated that excessive exposure to cetane improver (alkyl nitrates), which is hazardous to humans, requires special handling because of poor thermal stability. Detergent additives are similar to those used in gasoline and probably have similar safety and health issues. Except at low load operation, additives are not likely to result in any significant quantity in the exhaust. Another commenter stated that the effect on human health of new chemical exhaust species that may result from the use of some of these additives has not been determined. Engine manufacturers also are concerned about the use of such products because their effectiveness has not always been adequately demonstrated and, in many cases, the effect on engine durability has not been well-documented for different designs and operating conditions.

MSHA agrees with the commenters that fuel additives can affect engine performance and exhaust emissions. MSHA's experience with additives has shown that they can enhance fuel quality by increasing the cetane number, depressing the cloud point, or in the case of a barium based additive, affect the combustion process resulting in a reduction of particulate output. MSHA's experience also has shown that in most cases the effects of an additive on engine performance or emissions cannot be adequately determined without extensive research. The additives listed on EPA's list of ''registered additives'' meet the requirements of EPA's standards in 40 CFR Part 79.

MSHA is concerned about the use of untested fuel additives. A large number of additives are currently being marketed to reduce emissions. These additives include cetane improvers that increase the cetane number of the fuel, which may reduce emissions and improve starting; detergents that are used primarily to keep the fuel injectors clean; dispersants or surfactants that prevent the formation of thicker compounds that can form deposits on the fuel injectors or plug filters. While the use of many of these additives will result in reduced particulate emission, some have been found to introduce harmful agents into the environment. For this reason, it is a good idea to limit the use of additives to those that have been registered by the EPA.

Maintenance Practices. The ANPRM requested information concerning what maintenance procedures are effective in reducing diesel particulate emissions from existing diesel-powered equipment, and what additional maintenance procedures would be required in conjunction with anticipated developments of new diesel particulate reduction technology. Information was also requested about the amount of time to perform the maintenance procedures and if any, loss of production time.

Commenters stated that some maintenance procedures have a very dramatic impact on particulate emissions, while other procedures that are equally important for other reasons have little or no impact at all on particulates. Another commenter stated that maintenance procedures are intended to ensure that the engine operates and will continue to operate as intended. Such procedures will not reduce diesel particulate below that of the new, original equipment. A commenter stated that the diesel engine industry experience has demonstrated that emissions deterioration over the useful life of an engine is minimal.

Commenters stated that depending on the implied technology, the need for additional maintenance will be based on complexity of the control devices. Also, time for maintenance will be dependent on complexity of the control device. Some production loss will occur due to increased maintenance procedures.

MSHA agrees with the commenters' view that maintenance does affect engine emissions, some more dramatically than others. Research has clearly shown that without engine maintenance, all engine emissions will increase greatly. For example, the former Bureau of Mines, in conjunction with Southwest Research, conducted extensive research on the effects of maintenance on diesel engines which indicated this result (BOM contract H–0292009, 1979). MSHA agrees that emissions increase is minimal over the useful life of the engine only when proper maintenance is performed daily. However, MSHA believes that with the awareness of the increased maintenance, production may not be lost due to the increased time that the machines are able to operate without unwanted down time due to poor maintenance practices.

MSHA's diesel ''Toolbox'' includes an extensive discussion on the importance of maintenance. It reminds operators and diesel maintenance personnel of the basic systems on diesel engines that need to be maintained, and how to avoid various problems. It includes suggestions from others in the mining community, and information on their success or difficulties in this regard.

(7) *Existing Mining Standards that Limit Miner Exposure to Occupational Diesel Particulate Emissions.* MSHA already has in place various requirements that help to control miner exposure to diesel emissions in underground mines—including exposure to diesel particulate. These include ventilation requirements, engine approval requirements, and explicit restrictions on the concentration of various gases in the mine environment.

In addition, in 1996, MSHA promulgated a rule governing the use of diesel-powered equipment in underground coal mines (61 FR 55412). While the primary focus of the rulemaking was to promote the safe use of diesel engines in the hazardous environment of underground coal mines, various parts of the rule will help to control exposure to harmful diesel emissions in those mines. The new rule revised and updated MSHA's diesel engine approval requirements and the ventilation requirements for underground coal mines using diesel equipment, and established requirements concerning diesel fuel sulfur content and the idling, maintenance and emissions testing of diesel engines in underground coal mines.

Background. Beginning in the 1940s, mining regulations were promulgated to promote the safe and healthful use of diesel engines in underground mines. In 1944, Part 31 established procedures for limiting the gaseous emissions and establishing the recommended dilution air quantity for mine locomotives that use diesel fuel. In 1949, Part 32 established procedures for testing of mobile diesel-powered equipment for non-coal mines. In 1961, Part 36 was added to provide requirements for the use of diesel equipment in gassy noncoal mines, in which engines must be temperature controlled to prevent explosive hazards. These rules responded to research conducted by the former Bureau of Mines.

Continued research by the former Bureau of Mines in the 1950s and 1960s led to refinements of its ventilation recommendations, particularly when multiple engines are in use. An airflow of 100 to 250 cfm/bhp was

recommended for engines that have a properly adjusted fuel to air ratio (Holtz, 1960). An additive ventilation requirement was recommended for operation of multiple diesel units, which could be relaxed based on the mine operating procedures. This approach was subsequently refined to become a 100–75–50 percent guideline (MSHA Policy Memorandum 81–19MM, 1981). Under this guideline, when multiple pieces of diesel equipment are operated, the required airflow on a split of air would be the sum of: (a) 100 percent of the nameplate quantity for the vehicle with the highest nameplate air quantity requirement; (b) 75 percent of the nameplate air quantity requirement of the vehicle with the next highest nameplate air quantity requirement; and (c) 50 percent of the nameplate airflow for each additional piece of diesel equipment.

Diesel Equipment Rule. On October 6, 1987, MSHA published in the **Federal Register** (52 FR 37381) a notice establishing a committee to advise the Secretary of Labor on health and safety standards related to the use of diesel-powered equipment in underground coal mines. The ''Mine Safety and Health Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines'' (the Advisory Committee) addressed three areas of concern: the approval of diesel-powered equipment, the safe use of diesel equipment in underground coal mines, and the protection of miners' health. The Advisory Committee submitted its recommendations in July 1988.

With respect to the approval of diesel-powered equipment, the Advisory Committee recommended that all diesel equipment except for a limited class, be approved for use in underground coal mines. This approval would involve both safety (e.g., fire suppression systems) and health factors (e.g., maximum exhaust emissions).

With respect to the safe use of diesel equipment in underground coal mines, the Advisory Committee recommended that standards be developed to address the safety aspects of the use of diesel equipment, including such concerns as equipment maintenance, training of mechanics, and the storage and transport of diesel fuel.

The Advisory Committee also made recommendations concerning miner health, discussed later in this section.

As a result of the Advisory Committee's recommendations on approval and safe use, MSHA developed and, on October 25, 1996, promulgated as a final rule, standards for the ''Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines'' (61 FR 55412).

The October 25, 1996 final rule on diesels focuses on the safe use of diesels in underground coal mines. Integrated requirements are established for the safe storage, handling, and transport of diesel fuel underground, training of mine personnel, minimum ventilating air quantities for diesel powered equipment, maintenance requirements, fire suppression, and design features for nonpermissible machines. While the focus was on safety, certain rules related to emissions are included in the final rule. For example, the final rule requires maintenance on diesel powered equipment. Regular maintenance on diesel powered equipment should keep the diesel engine and vehicle operation at its original or baseline condition. However, as a check that the maintenance is being performed, MSHA wrote a standard for checking the gaseous CO emission levels on permissible and heavy duty outby machines to determine the need for maintenance. The CO check requires that a regular repeatable loaded engine condition be run on a weekly basis and the CO measured. Carbon monoxide is a good indicator of engine condition. If the CO measurement increases to a higher concentration than what was normally measured during the past weekly checks, then a maintenance person would know that either the regular maintenance was missed or a problem has developed that is more significant than could be identified by a general daily maintenance program.

Consistent with the Advisory Committee's recommendation, the final rule, among other things, requires that virtually all diesel-powered engines used in underground coal mines be approved by MSHA (30 CFR Part 7 (approval requirements), Part 36 (permissible machines defined), and Part 75 (use of such equipment in underground coal mines). The approval requirements, among other things, are designed to require clean-burning engines in diesel-powered equipment (61 FR 55417). In promulgating the final rule, MSHA recognized that clean-burning engines are ''critically important'' to reducing toxic gasses to levels that can be controlled through ventilation. (Id.). To achieve the objective of clean-burning engines, the rule sets performance standards which must be met for virtually all diesel-powered equipment in underground coal mines (30 CFR Part 7).

Consistent with the recommendation of the Advisory Committee, the technical requirements for approved diesel engines include undiluted exhaust limits for carbon monoxide and oxides of nitrogen (61 FR 55419). As recommended by the Advisory Committee, the limits for these gasses are derived from existing 30 CFR Part 36 (61 FR 55419). Also, consistent with the recommendation of the Advisory Committee, the final rule requires that as part of the approval process, ventilating air quantities necessary to maintain the gaseous emissions of diesel engines within existing required ambient limits be set (61 FR 55420). As recommended by the Advisory Committee, the ventilating air quantities are required to appear on the engine's approval plate (61 FR 55421).

The final rule also implements the Advisory Committee's recommendation that a particulate index be set for diesel engines (61 FR 55421). Although, as discussed below, there is not yet a specific standard limiting miners' exposure to diesel particulate, the particulate index is nonetheless useful in providing information to the mining community so that operators can compare the particulate levels generated by different engines (61 FR 55421).

Also consistent with the recommendation of the Advisory Committee, the final rule addresses the monitoring and control of gaseous diesel exhaust emissions (30 CFR part 70; 61 FR 55413). In this regard, the final rule requires that mine operators take samples of carbon monoxide and nitrogen dioxide (61 FR 55413, 55430–55431). Samples exceeding an action level of 50 percent of the threshold limits set forth in 30 CFR 75.322, trigger corrective action by the mine operator (30 CFR part 70, 61 FR 55413). Also consistent with the Advisory Committee's recommendation, the final rule requires that diesel-powered equipment be adequately maintained (30 CFR 75.1914; 61 FR 55414). Among other things, as recommended by the Advisory Committee, the rule requires the weekly examination of diesel-powered equipment, including testing of undiluted exhaust emissions for certain types of equipment (30 CFR 75.1914(g)). In addition, consistent with the Advisory Committee's recommendation, operators are required to establish programs to ensure that those performing maintenance on diesel equipment are qualified (61 FR 55414). As explained in the preamble, maintenance requirements were included because of MSHA's recognition that inadequate equipment maintenance can, among other things, result in increased levels of harmful gaseous and particulate components

from diesel exhaust (61 FR 55413–55414).

Consistent with the Advisory Committee's recommendation, the final rule also requires that underground coal mine operators use low sulfur diesel fuel (30 CFR 75.1901; 61 FR 55413). The use of low sulfur fuel lowers not only the amount of gaseous emissions, but also the amount of diesel particulate emissions. (Id.). To further reduce miners' exposure to diesel exhaust, the final rule prohibits operators from unnecessarily idling diesel-powered equipment (30 CFR 75.1916(d)).

Also consistent with the recommendation of the Advisory Committee, the final rule establishes minimum air quantity requirements in areas of underground coal mines where diesel-powered equipment is operated (30 CFR 75.325). As set forth in the preamble, MSHA believes that effective mine ventilation is a key component in the control of miners' exposure to gasses and particulate emissions generated by diesel equipment (61 FR 55433). The final rule also requires generally that mine operators maintain the approval plate quantity minimum airflow in areas of underground coal mines where diesel-powered equipment is operated (30 CFR 75.325 [3]).

The diesel equipment rule will help the mining community use diesel-powered equipment more safely in underground coal mines. As discussed throughout this preamble, the diesel equipment rule has many features which, though it was not their primary purpose, will incidently reduce harmful diesel emissions in underground coal mines—including the particulate component of these emissions. (The requirements of the diesel equipment rule are highlighted with a special typeface in MSHA's publication, ''Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox''). An example is the requirement in the diesel equipment rule that all engines used in underground coal mines be approved engines, and be maintained in approved condition—thus reducing emissions at the source.

In developing this safety rule, however, MSHA did not explicitly consider the risks to miners of a working lifetime of dpm exposure at very high levels, nor the actions that could be taken to specifically reduce those exposure levels in underground coal mines. Moreover, the rule does not apply to the remainder of the mining industry, where the use of diesel machinery is much more intense than in underground coal.

Gas limits. Various organizations have established or recommended limits for many of the gasses occurring in diesel exhaust. Some of these are listed in Table II–2, together with information about the limits currently enforced by MSHA. MSHA requires mine operators to comply with gas specific threshold limit values (TLV(TM)s) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1972 (for coal mines) and in 1973 (for metal and nonmetal mines).

[3] On December 23, 1997, the National Mining Association and Energy West Mining Company filed petitions for review of the final rule. *National Mining Association* v. *Secretary of Labor,* Nos. 96–1489 and 96–1490. These cases were consolidated and held in abeyance pending discussions between the mining industry and the Secretary. On March 19, 1998, petitioners filed an Unopposed Joint Motion for Voluntary Dismissal. In April 1998, the Court granted the Motion for Dismissal.

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TABLE II-2 GASEOUS EXPOSURE LIMITS (PPM)

Pollutant	Range of Limits Recommended		MSHA Limits	
			$Coal_A$	M/NM_B
HCHO	0.016_C	0.3_D	2	2
CO	25_D	50	50	50
CO_2	$5,000_C$	5,000	5,000	5,000
NO	$25_{C,D,E}$	25	25	25
NO_2	1_F	3_D	5	5
SO_2	$2_{C,D}$	5_E	2	5

Table Notes:

A) ACGIH, 1972

B) ACGIH, 1973

C) NIOSH recommended exposure limit (REL), based on a 10-hour, time-weighted average

D) ACGIH, 1996

E) OSHA permissible exposure limit (PEL)

F) NIOSH recommends only a 1-ppm, 15-minutes, short-term exposure limit (STEL)

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In 1989, MSHA proposed changing some of these limits in the context of a proposed rule on air quality standards (54 FR 35760). Following opportunity for comment and hearings, a portion of that proposed rule, concerning control of drill dust, has been promulgated, but the other components are still under review. To change a limit at this point in time requires a regulatory action; the rule does not provide for their automatic updating.

(8) How Other Jurisdictions Are Restricting Occupational Exposure to Diesel Soot.

On April 9, 1998, MSHA published a proposed rule to limit the exposure of underground coal miners to dpm. With this proposed rule, MSHA's rulemaking is the first effort by the Federal government to deal with the special risks faced by workers exposed to diesel exhaust on the job—because, as described in detail in the Part III of this preamble, miner exposures are an order of magnitude above those of any other group of workers. But others have been looking at the problem of exposure to diesel soot.

MSHA's Final Rule for Underground Coal Mines. In 1996, MSHA published a final rule on addressing the safe use of diesels in underground coal mines. Integrated requirements are established for the safe storage, handling, and transport of diesel fuel underground, training of mine personnel, minimum ventilating air quantities for diesel powered equipment, maintenance requirements, fire suppression, and design features for nonpermissible machines.

States. As noted in the first section of this part, few underground coal mines now use diesel engines. Several states have had bans on the use of such equipment: Pennsylvania, West Virginia, and Ohio.

Recently, Pennsylvania has replaced its ban with a special law that permits the use of diesel-powered equipment in deep coal mines under certain circumstances. The Pennsylvania statute goes beyond MSHA's new regulation on the use of diesel-powered equipment in underground coal mines. Of particular interest is that it specifically addresses diesel particulate. The State did not set a limit on the exposure of miners to dpm, nor did it establish a limit on the concentration of dpm in deep coal mines. Rather, it approached the issue by imposing controls that will limit dpm emissions at the source.

First, all diesel engines used in underground deep coal mines in Pennsylvania must be MSHA-approved engines with an ''exhaust emissions control and conditioning system'' that meets certain tests. (Article II–A, Section 203–A, Exhaust Emission Controls). Among these are dpm emissions from each engine no greater than ''an average concentration of 0.12 mg/m^3 diluted by fifty percent of the MSHA approval plate ventilation for that diesel engine.'' In addition, any exhaust emissions control and conditioning system must include a ''Diesel Particulate Matter (DPM) filter capable of an average of ninety-five percent or greater reduction of dpm emissions.'' It also requires the use of an oxidation catalytic converter. Thus, the Pennsylvania statute requires the use of low-emitting engines, and then the use of aftertreatment devices that significantly reduce what particulates are emitted from these engines.

The Pennsylvania law also has a number of other requirements for the safe use of diesel-powered equipment in the particularly hazardous environments of underground coal mines. Many of these parallel the requirements in MSHA's rule. Like MSHA's requirements, they too can result in reducing miner exposure to diesel particulate—e.g., regular maintenance of diesel engines by qualified personnel and equipment operator examinations. The requirements in the Pennsylvania law take into account the need to maintain the aftertreatment devices required to control diesel particulate (see, e.g., Section 217–A (b)(6)).

West Virginia has also lifted its ban, subject to rules to be developed by a joint labor-management commission. MSHA understands that pursuant to the West Virginia law lifting the ban, the Commission has only a limited time to determine the applicable rules, or the matter is to be referred to an arbitrator for resolution.

Other Countries. Concerns about air pollution have been a major impetus for most countries' standards on vehicle emissions, including diesel particulate. Most industrialized nations recognize the fundamental principle that their citizens should be protected against recognized health risks from air pollution and that this requires the control of particulate such as diesel exhaust. In November of 1995, for example, the government of the United Kingdom recommended a limit on PM10, and noted it would be taking further actions to limit airborne particulate matter (including a special study of dust from surface minerals workings).

Concerns about international trade have been another impetus. Diesel engines are sold to an international market to power many types of industrial and nonindustrial machinery and equipment. The European Union manufacturers exported more than 50 percent of their products, mainly to South Korea, Taiwan, China, Australia, New Zealand and the United States. Germany and the United Kingdom, two major producers, have pushed for harmonized world standards to level the playing field among the various countries' engine producers and to simplify the acceptance of their products by other countries (Financial Times, 1996). This includes products that must be designed to meet pollution standards. The European Union (EU) is now considering a proposal to set an EU-wide standard for the control of the emission of pollutants from non-road mobile machinery (Official Journal of European Communities, 1995). The proposal would largely track that of the U.S. Environmental Protection Agency's final rule on the Control of Air Pollution Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-Ignition Engines at or above 37 kilowatts (50 HP)p (discussed in Section 3 of this part of the preamble).

A third impetus to action has been the studies of the health effects of worker exposure to diesel exhaust—many of which have been epidemiological studies concerning workers in other countries. As noted in Part III of this preamble, the studies include cohorts of Swedish dock workers and bus garage workers, Canadian railway workers and miners, French workers, London transport workers, and Danish chimney sweeps.

Below, the agency summarizes some information obtained on exposure limits of other countries. Due to differences in regulatory schemes among nations considering the effects of diesel exhaust, countries which have addressed the issue are more likely to have issued recommendations rather than a mandatory maximum exposure limit. Some of these may have issued mandatory design features for diesel equipment to assist in achieving the recommended exposure level. Measurement systems also vary.

Germany. German legislation on dangerous substances classifies diesel engine emissions as carcinogenic. Therefore, diesel engines must be designed and operated using the latest technology to cut emissions. This always requires an examination to determine whether the respective operations and activities may be carried out using other types of less polluting equipment. If, as a result of the

examination, it is decided that the use of diesel engines is necessary, measures must be instituted to reduce emissions. Such measures can include low-polluting diesel engines, low sulphur fuels, regular maintenance, and, where technology permits, the use of particulate traps. To reduce exposure levels further, diesel engine emissions may be regulated directly at the source; ventilation systems may be required to be installed.

The use of diesel vehicles in a fully or partly enclosed working space—such as in an underground mine—may be restricted by the government, depending on the necessary engine power or load capacity and on whether the relevant operation could be accomplished using a non-polluting vehicle, e.g. an electrically powered vehicle. When determining whether alternate equipment is to be used, the burden to the operator to use such equipment is also considered.

In April of 1997, the following permissible exposure limits (TRK[4]) for diesel engine emissions were instituted for workplaces in mining.

(1) non-coal underground mining and construction work: TRK = 0.3 mg/m^3 of colloid dust[5]
(2) other: TRK = 0.1 mg/m^3 of colloid dust
(3) The average concentration of diesel engine emissions within a period of 15 minutes should never be higher than four times the TRK value.

The TRK is ascertained by determining the fraction of elemental carbon in the colloid (fine) dust by coulometric analysis. Determining the fraction of elemental carbon always involves the determination of total organic carbon in the course of analysis. If the workplace analysis shows that the fraction of elemental carbon in total carbon (elemental carbon plus organic carbon) is lower than 50%, or is subject to major fluctuations, then the TRK limits total carbon in such workplaces to 0.15 mg/m^3.

Irrespective of the TRK levels, the following additional measures are considered necessary once the concentration reaches 0.1 mg/m^3 colloid dust:

(1) Informing employees concerned;
(2) Limited working hours for certain staff categories;
(3) Special working hours; and
(4) Medical checkups.

If concentrations continue to fail to meet the TRK level, the employer must:

(1) Provide appropriate, effective, hygienic breathing apparatus, and

(2) Ensure that workers are not kept at the workplace for longer than absolutely necessary and that health regulations are observed.

Workers must use the breathing apparatus if the TRK levels for diesel engine emissions at the work place are exceeded. Due to the interference of recognized analysis techniques in coal mining, it is currently impossible to ascertain exposure levels in the air in coal mines. As a consequence, the coal mining authorities require the use of special low-polluting engines in underground mining and impose special requirements on the supply of fresh air to the workplace.

European Standards. On April 21, 1997, the draft of a European directive that applied to emissions from non-road mobile machinery was prepared. The directive proposed technical measures that would result in a reduction in emissions from internal-combustion engines (gasoline and diesel) installed in non-road mobile machinery, and type-approval procedures that would provide uniformity among the member nations for the approval of these engines.

The directive proposed a two-stage process. Stage 1, proposed to begin December 31, 1997, was for three different engine categories:

—A: 130 kW <= P <= 560 kW,
—B: 75 kW <= P < 130 kW,
—C: 37 kW <= P < 75 kW.

Stage 2, proposed to begin December 31, 1999, consisted of four engine categories being phased-in over a four-year period:

—D: after December 31,1999 for engines of a power output of 18 kW <= P < 37 kW,
—E: after December 31, 2000 for engines of a power output of 130 kW <= P <= 560 kW,
—F: after December 31, 2001 for engines of a power output of 75 kW <= P < 130 kW,
—G: after December 31, 2002 for engines of a power output of 37 kW <= P <= 75 kW.

The emissions shown in the following table for carbon monoxide, hydrocarbons, oxides of nitrogen and particulates are to be met for the respective engine categories described for stage I.

Net power (P) (kW)	Carbon Monoxide (P) (g/kWh)	Hydrocarbons (HC) (g/kWh)	Oxides of Nitrogen (No_X) (g/kWh)	Particulates (PT) (g/kWh)
130 ≤ P < 560	5.0	1.3	9.2	0.54
75 ≤ P < 130	5.0	1.3	9.2	0.70
37 ≤ P < 75	6.5	1.3	9.2	0.85

The engine emission limits that have to be achieved for stage II are shown in the following table. The emissions limits shown are engine-out limits and are to be achieved before any aftertreatment device is used.

Net power (P) (kW)	Carbon Monoxide (P) (g/kWh)	Hydrocarbons (HC) (g/kWh)	Oxides of Nitrogen (No_X) (g/kWh)	Particulates (PT) (g/kWh)
130 ≤ P < 560	3.5	1.0	6.0	0.2
75 ≤ P < 130	5.0	1.0	6.0	0.3
37 ≤ P < 75	5.0	1.3	7.0	0.4
18 ≤ P < 37	5.5	1.5	8.0	0.8

[4] TRK is the technical exposure limit of a hazardous material that defines the concentration of gas, vapour or airborne particulates which is the minimum possible with current technology and which serves as a guide for necessary protective measures and monitoring in the workplace.

[5] Colloid dust is defined as that part of total respirable dust in a workplace that passes the alveolar ducts of the worker.

Canada (Related developments in Canada). The Mining and Minerals Research Laboratories (MMRL) of the Canada Centre for Mineral and Energy Technology (CANMET), an arm of the Federal Department of Natural Resources Canada (NRCAN), began work in the early 1970s to develop measurement tools and control technologies for diesel particulate matter (dpm). In 1978, I.W. French and Dr. Anne Mildon produced a CANMET-sponsored contract study entitled: ''Health Implications of Exposure of Underground Mine Workers to Diesel Exhaust Emissions.'' In this document, an Air Quality Index (AQI) was developed involving several major diesel contaminants (CO, NO, NO2, SO2 and RCD—respirable combustible dust which is mostly dpm). These concentrations were divided by their then current permissible exposure limits, and the sum of the several ratios indicates the level of pollution in the mine atmosphere. The maximum value for this Index was fixed at 3.0. This criterion was determined by the known health hazard associated with small particle inhalation, and the known chemical composition of dpm, among other matters.

Subsequently, in 1986, the Canadian Ad hoc Diesel Committee was formed from all segments of the mining industry, including: mine operators, the labor force, equipment manufacturers, research agencies including CANMET, and Canadian regulatory bodies. The objective was the identification of major problems for research and development attention, the undertaking of the indicated studies, and the application of the results to reduce the impact of diesel machines on the health of underground miners.

In 1990–91, CANMET developed an RCD mine sampling protocol on behalf of the Ad hoc Committee. Then current underground sampling studies indicated an average ratio of RCD to dpm of 1.5. This factor accounted for the presence of other airborne combustible liquids including fuel, lubrication and particularly drilling oils, in addition to the dpm.

The original 1978 French-Mildon study was updated under a CANMET contract in 1990. It recommended that the dpm levels be reduced to 0.5 mg/m^3 (suggesting a corresponding RCD level of 0.75 mg/m^3).

However, in 1991, the AD HOC Committee decided to set an interim recommended RCD level of 1.5 mg/m^3 (the equivalent 1.0 mg/m^3). This value matched the then recommended, but not promulgated, MSHA 'Ventilation Index' value for dpm of 1.0 mg/m^3. Consequently, all of the North American mining industry then seemed to be accepting the same maximum levels of dpm.

It should be noted that for coal mine environments or other environments where a non-diesel carbonaceous aerosol is present, RCD analysis is not an appropriate measure of dpm levels.

Neither CANMET nor the Ad hoc Committee is a regulatory body. In Canada, mining is regulated by the individual provinces and territories. However, the federal laboratories provide: research and development facilities, advice based on research and development, and engine/machine certification services, in order to assist the provinces in their diesel-related mining regulatory functions.

Prior to the 1991 recommendation of the Ad hoc Committee, Quebec enacted regulations requiring: ventilation, a maximum of 0.25% sulfur content in diesel fuel; a prohibition on black smoke; exhaust cooling to a maximum temperature of 85°C; and the setting of maximum contaminant levels. Since 1997, new regulations add the CSA Standard for engine certification, a maximum RCD level of 1.5 mg/m^3, and the application of an exhaust treatment system.

Further, after the Ad hoc Committee recommendation was published in 1991 (RCDmax = 1.5 mg/m^3), various provinces took the following actions:

(1) Five provinces—British Columbia, Ontario, Quebec, New Brunswick, and Nova Scotia, and the Northwest Territories, adopted an RCD limit of 1.5 mg/m^3.

(2) Two others, Manitoba and Newfoundland/Labrador, have been adopting the ACGIH TLVs.

(3) Two provinces, Alberta and Saskatchewan, and the Yukon Territory, continue to have no dpm limit.

Most Canadian Inspectorates accept the CSA Standard for diesel machine/engine certification. This Standard specifies the undiluted Exhaust Quality Index (EQI) criterion for calculation of the ventilation in cfm, required for each diesel engine/machine. Fuel sulfur content, type of aftertreatment device and rated engine load factor are on-site, variable factors which may alter the ventilation ultimately required. Diesel fuel may not exceed 0.50% sulfur, and must have a minimum flash point of 52°C. However, most mines in Canada now use fuel containing less than 0.05% sulfur by weight.

In addition to limiting the RCD concentration, Ontario, established rules in 1994 that required diesel equipment to meet the Canadian Standards Association ''Non-Rail-Bound Diesel-Powered Machines for use in Non-Gassy Underground Mines'' (CSA M424.2–M90) Standard, excepting the ventilation assessment clauses. As far as fuel sulfur and flashpoint are concerned, Ontario is intending to change to: Smax = 0.05% from 0.25%, and maximum fuel flash point = 38°C from 52°C.

New Brunswick, in addition to limiting the RCD concentration, requires mine operators to submit an ambient air quality monitoring plan. Diesel engines above 100 horsepower must be certified, and there is a minimum ventilation requirement of 105 cfm/bhp.

Since 1996, the Ad hoc organization and the industry consortium called the Diesel Emissions Evaluation Program (DEEP) have been cooperating in a research and development program designed to reduce dpm levels in mines.

World Health Organization (WHO). Environmental Health Criteria 171 on ''Diesel Fuel and Exhaust Emissions'' is a 1996 monograph published under joint sponsorship of the United Nations Environment Programme, the International Labour Organisation, and the World Health Organization. The monograph provides a comprehensive review of the literature and evaluates the risks for human health and the environment from exposure to diesel fuel and exhaust emissions.

The following tables compiled in the monograph show diesel engine exhaust limits for various exhaust components and illustrate that there is international concern about the amount of diesel exhaust being released into the environment.

TABLE II–3.—INTERNATIONAL LIMIT VALUES FOR COMPONENTS OF DIESEL EXHAUST LIGHTDUTY VEHICLES (G/KM)

Region	Carbon monoxide	Nitrogen oxides	Hydrocarbons	Particulates	Comments
Austria	2.1	0.62	0.25	0.124	≤3.5t; since 1991; from 1995, adoption of European Union standards planned.

TABLE II–3.—INTERNATIONAL LIMIT VALUES FOR COMPONENTS OF DIESEL EXHAUST LIGHTDUTY VEHICLES (G/KM)—Continued

Region	Carbon monoxide	Nitrogen oxides	Hydrocarbons	Particulates	Comments
Canada	2.1	0.62	0.25	0.12	Since 1987.
European Union	2.72	0.97 (with hydrocarbons).		0.14	Since 1992.
	1.0	0.7		0.08	From 1996.
Finland					Since 1993.
Japan	2.1	0.7	0.62	None	Since 1986.
	2.1	0.5	0.4	0.2	Since 1994.
Sweden, Norway	2.1	0.62 (city)	0.25	0.124	≤3.5t; from motor year 1992.
		0.76 (highway)			
Switzerland	2.1	0.62 (city)	0.25	0.124	≤3.5t; since 1988; from 1995, adoption of European Union standard planned.
USA (California)	2.1–5.2	0.2–0.6	0.2–0.3 (except methane).	0.05 (up to 31 000 km).	Depending on mileage.
US Environmental Protection Agency.	2.1–2.6	0.6–0.8	0.2	0.05–0.12	Depending on mileage.

TABLE II–4.—INTERNATIONAL LIMIT VALUES FOR COMPONENTS OF DIESEL EXHAUST HEAVY-DUTY VEHICLES (G/KWH)

Region	Carbon monoxide	Nitrogen oxides	Hydro-carbons	Particulates	Comments
Austria	4.9	9.0	1.23	0.4	
Canada	15.5	5.0	1.3	0.25	g/bhp-h.
	15.5	5.0	1.3	0.1	g/bhp-h; from 1995–97.
European Union	4.5	8.0	1.1	0.36	Since 1992.
	4.0	7.0	1.1	0.15	From 1995–96.
Japan	7.4	5.0	2.9	0.7	Indirect injection engines.
	7.4	6.0	2.9	0.7	Direct injection engines.
Sweden	4.9	9.0	1.23	0.4	
USA	15.5	5.0	1.3	0.07	g/bhp-h; bus.
	15.5	4.0	1.3	0.1	g/bhp-h; truck.
	15.5	5.0	1.3	0.05	g/bhp-h; bus; from 1998
	15.5	4.0	1.3	0.1	g/bhp-h; truck; from 1998.

Adapted from Mercedes-Benz AG (1994b).

With respect to the protection of human health, the monograph states that the data reviewed supports the conclusion that inhalation of diesel exhaust is of concern with respect to both neoplastic and non-neoplastic diseases. The monograph found that diesel exhaust ''is probably carcinogenic to humans.'' It also states that the particulate phase appears to have the greatest effect on health, and both the particle core and the associated organic materials have biological activity, although the gas-phase components cannot be disregarded. The monograph recommends the following actions for the protection of human health:

(1) Diesel exhaust emissions should be controlled as part of the overall control of atmospheric pollution, particularly in urban environments.

(2) Emissions should be controlled strictly by regulatory inspections and prompt remedial actions.

(3) Urgent efforts should be made to reduce emissions, specifically of particulates, by changing exhaust train techniques, engine design, and fuel consumption.

(4) In the occupational environment, good work practices should be encouraged, and adequate ventilation must be provided to prevent excessive exposure.

The monograph made no recommendations as to what constitutes excessive exposure.

International Agency for Research on Cancer (IARC)

The carcinogenic risks for human beings were evaluated by a working group convened by the International Agency for Research on Cancer in 1988 (International Agency for Research on Cancer, 1989b). The conclusions were:

(1) There is sufficient evidence for the carcinogenicity in experimental animals of the whole diesel engine exhaust.

(2) There is inadequate evidence for the carcinogenicity in animals of gas-phase diesel engine exhaust (with particles removed).

(3) There is sufficient evidence for the carcinogenicity in experimental animals of extracts of diesel engine exhaust particles.

(4) There is limited evidence for the carcinogenicity in humans of engine exhausts (unspecified as from diesel or gasoline engines).

Overall IARC Evaluation

Diesel engine exhaust is probably carcinogenic to humans (Group 2A).

(9) *MSHA's Initiative To Limit Miner Exposure to Diesel Particulate—a Brief History of This Rulemaking and Related Actions*

As discussed in part III of this preamble, by the early 1980's, the evidence indicating that exposure to diesel exhaust might be harmful to miners, particularly in underground mines, had started to grow. As a result, formal agency actions were initiated to investigate this possibility and to determine what, if any, actions might be appropriate. These actions are

summarized here in chronological sequence, without comment as to the basis of any action or conclusion.

In 1984, in accordance with the § 102(b) of the Mine Act, NIOSH established a standing Mine Health Research Advisory Committee to advise it on matters involving or related to mine health research. In turn, that group established a subgroup to determine if:

> * * * there is a scientific basis for developing a recommendation on the use of diesel equipment in underground mining operations and defining the limits of current knowledge, and recommending areas of research for NIOSH, if any, taking into account other investigators' ongoing and planned research. (49 FR 37174).

In 1985, MSHA established an Interagency Task Group with the National Institute for Occupational Safety and Health (NIOSH) and the former Bureau of Mines (BOM) to assess the health and safety implications of the use of diesel-powered equipment in underground coal mines. In part, as a result of the recommendation of the Task Group, MSHA, in April 1986, began drafting proposed regulations on the approval and use of diesel-powered equipment in underground coal mines. Also in 1986, the subgroup of the NIOSH advisory committee studying this issue summarized the evidence available at that time as follows:

> It is our opinion that although there are some data suggesting a small excess risk of adverse health effects associated with exposure to diesel exhaust, these data are not compelling enough to exclude diesels from underground mines. In cases where diesel equipment is used in mines, controls should be employed to minimize exposure to diesel exhaust. (Interagency Task Group Report, 1986).

As noted previously in Section 7 of this part, in discussing MSHA's diesel equipment rule, on October 6, 1987, pursuant to Section 102(c) of the Mine Act, 30 U.S.C. 812(c), MSHA appointed an advisory committee ''to provide advice on the complex issues concerning the use of diesel-powered equipment in underground coal mines.'' (52 FR 37381). MSHA appointed nine members to the Advisory Committee. As required by Section 101(a)(1), MSHA provided the Advisory Committee with draft regulations on the approval and use of diesel-powered equipment in underground coal mines. The draft regulations did not include standards setting specific limitations on diesel particulate, nor had MSHA at that time determined that such standards should be promulgated.

In July 1988, the Advisory Committee completed its work with the issuance of a report entitled ''Report of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.'' The Advisory Committee recommended that MSHA promulgate standards governing the approval and use of diesel-powered equipment in underground coal mines. The Advisory Committee recommended that MSHA promulgate standards limiting underground coal miners' exposure to diesel exhaust.

With respect to diesel particulate, the Advisory Committee recommended that MSHA ''set in motion a mechanism whereby a diesel particulate standard can be set.'' (MSHA, 1988). In this regard, the Advisory Committee determined that because of inadequacies in the data on the health effects of diesel particulate matter and inadequacies in the technology for monitoring the amount of diesel particulate matter at that time, it could not recommend that MSHA promulgate a standard specifically limiting the level of diesel particulate matter. (*Id*. 64–65). Instead, the Advisory Committee recommended that MSHA request NIOSH and the former BOM to prioritize research in the development of sampling methods and devices for diesel particulate. The Advisory Committee also recommended that MSHA request a study on the chronic and acute effects of diesel emissions (*Id*). In addition, the Advisory Committee recommended that the control of diesel particulate ''be accomplished through a combination of measures including fuel requirements, equipment design, and in-mine controls such as the ventilation system and equipment maintenance in conjunction with undiluted exhaust measurements.'' The Advisory Committee further recommended that particulate emissions ''be evaluated in the equipment approval process and a particulate emission index reported.'' (*Id*. at 9).

In addition, the Advisory Committee recommended that ''the total respirable particulate, including diesel particulate, should not exceed the existing two milligrams per cubic meter respirable dust standard.'' (*Id*. at 9). Section 202(b)(2) of the Mine Act requires that coal mine operators maintain the average concentration of respirable dust at their mines at or below two milligrams per cubic meter which effectively prohibits diesel particulate matter in excess of two milligrams per cubic meter, 30 U.S.C. 842(b)(2).

Also in 1988, NIOSH issued a Current Intelligence Bulletin recommending that whole diesel exhaust be regarded as a potential carcinogen and controlled to the lowest feasible exposure level (NIOSH, 1988). In its bulletin, NIOSH concluded that although the excess risk of cancer in diesel exhaust exposed workers has not been quantitatively estimated, it is logical to assume that reductions in exposure to diesel exhaust in the workplace would reduce the excess risk. NIOSH stated that ''[g]iven what we currently know there is an urgent need for efforts to be made to reduce occupational exposures to DEP [dpm] in mines.''

Consistent with the Advisory Committee's research recommendations, MSHA, in September 1988, formally requested NIOSH to perform a risk assessment for exposure to diesel particulate (57 FR 500). MSHA also requested assistance from NIOSH and the former BOM in developing sampling and analytical methodologies for assessing exposure to diesel particulate in mining operations. (*Id*.). In part, as a result of the Advisory Committee's recommendation, MSHA also participated in studies on diesel particulate sampling methodologies and determination of underground occupational exposure to diesel particulate. A list of the studies requested and reports thereof is set forth in 57 FR 500–501.

On October 4, 1989, MSHA published a Notice of Proposed Rulemaking on approval requirements, exposure monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines (54 FR 40950). The proposed rule, among other things, addressed, and in fact followed, the Advisory Committee's recommendation that MSHA promulgate regulations requiring the approval of diesel engines (54 FR 40951); limiting gaseous pollutants from diesel equipment, (*Id*.); establishing ventilation requirements based on approval plate dilution air quantities (54 FR 40990); requiring equipment maintenance (54 FR 40958); requiring that trained personnel work on diesel-powered equipment; (54 FR 40995), establishing fuel requirements, (*Id*.); establishing gaseous contaminant monitoring (54 FR 40989); and requiring that a particulate index indicating the quantity of air needed to dilute particulate emissions from diesel engines be established (54 FR 40953).

On January 6, 1992, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) indicating that it was in the early stages of developing a rule specifically addressing miners' exposure to diesel particulate (57 FR 500). In the ANPRM, MSHA, among other things, sought comment on specific reports on diesel particulate prepared by NIOSH and the former BOM. (*Id*.). MSHA also sought comment

on reports on diesel particulate which were prepared by or in conjunction with MSHA (57 FR 501). The ANPRM also sought comments on the health effects, technological and economic feasibility, and provisions which should be considered for inclusion in a diesel particulate rule (57 FR 501). The notice also identified five specific areas where the agency was particularly interested in comments, and about which it asked a number of detailed questions: (1) exposure limits, including the basis therefore; (2) the validity of the NIOSH risk assessment model and the validity of various types of studies; (3) information about non-cancer risks, non-lung routes of entry, and the confounding effects of tobacco smoking; (4) the availability, accuracy and proper use of sampling and monitoring methods for diesel particulate; and (5) the technological and economic feasibility of various types of controls, including ventilation, diesel fuel, engine design, aftertreatment devices, and maintenance by mechanics with specialized training. The notice also solicited specific information from the mining community on ''the need for a medical surveillance or screening program and on the use of respiratory equipment.'' (57 FR 500). The comment period on the ANPRM closed on July 10, 1992.

While MSHA was completing a ''comprehensive analysis of the comments and any other information received'' in response to the ANPRM (57 FR 501), it took several actions to encourage the mining community to begin to deal with this problem, and to provide the knowledge and equipment needed for this task. As described earlier in this part, the Agency held several workshops in 1995, published a ''Toolbox'' of controls, and developed a spreadsheet template that allows mine operators to compare the impacts of various controls on dpm concentrations in individual mines.

On October 25, 1996, MSHA published a final rule addressing approval, exhaust monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines (61 FR 55412). The final rule addresses and in large part is consistent with the specific recommendations made by the Advisory Committee for limiting underground coal miners' exposure to diesel exhaust. (A further summary of this rule is contained in Section 7 of this part).

On February 26, 1997, the United Mine Workers of America petitioned the U.S. Court of Appeals for the D.C. Circuit to issue a writ of mandamus ordering the Secretary of Labor to promulgate a rule on diesel particulate. In Re: International Union, United Mine Workers of America , D.C. Cir. Ct. Appeals, No. 97–1109. The matter was scheduled for oral argument on September 12, 1997. On September 11, 1997, the Court granted the parties' joint motion to continue oral argument and hold the proceedings in abeyance. The Court directed the parties to file status reports or motions to govern future proceedings at 90-day intervals. On April 9, 1998, (63 FR 17492), MSHA published a proposed rule to limit the exposure of underground coal miners to dpm. On April 30, 1998, the Secretary filed a Motion To Dismiss based on the issuance of the notice of proposed rulemaking to limit the exposure of underground coal miners to dpm. On June 26, 1998, the Court dismissed the petition for Writ of Mandamus insofar as it sought regulations addressing diesel particulate.

III. Risk Assessment

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Introduction. MSHA has reviewed the scientific literature to evaluate the potential health effects of diesel particulate at occupational exposures encountered in the mining industry. Based on its review of the currently available information, this part of the preamble assesses the risks associated with those exposures. Additional material submitted for the record will be considered by MSHA before final determinations are made.

Agencies sometimes place risk assessments in the rulemaking record and provide only a summary in the preamble for a proposed rule. MSHA has decided that, in this case, it is important to disseminate a discussion of risk widely throughout the mining community. Therefore, the full assessment is being included as part of the preamble.

The risk assessment begins with a discussion of dpm exposure levels observed in the mining industry. This is followed by a review of information available to MSHA on health effects that have been associated with diesel particulate exposure. Finally, in the section entitled ''Characterization of Risk,'' the Agency considers three questions that must be addressed for rulemaking under the Mine Act, and relates the available information about risks of dpm exposure at current levels to the regulatory requirements.

A risk assessment must be technical enough to present the evidence and describe the main controversies surrounding it. At the same time, an overly technical presentation could cause stakeholders to lose sight of the main points. MSHA is guided by the first principle the National Research Council established for risk characterization: that the approach be—

> [a] decision driven activity, directed toward informing choices and solving problems*** Oversimplifying the science or skewing the results through selectivity can lead to the inappropriate use of scientific information in risk management decisions, but providing full information, if it does not address key concerns of the intended audience, can undermine that audience's trust in the risk analysis.

MSHA intends this risk assessment to further the rulemaking process. The purpose of a proposed rulemaking is to notify the regulated community of what

information the agency is evaluating, how the agency believes it should evaluate that information, and what tentative conclusions the agency has drawn. Comments, supporting data, and guidance from all interested members of the public are encouraged. The risk assessment presented here is meant to facilitate public comment, thus helping to ensure that final rulemaking is based on as complete a record as possible—on both the evidence itself and the manner in which it is to be evaluated by the Agency. Those who want additional detail are welcome to examine the materials cited in this part, copies of which are included in MSHA's rulemaking record.

While this rulemaking covers only the underground metal and nonmetal sector, the risk assessment was prepared so as to enable MSHA to assess the risks throughout the mining industry. Accordingly, this information will be of interest to the entire mining community. With the exception of the discussion in Sec. III.3.c quantifying by how much the proposed rule may be expected to reduce current risks, this risk assessment is substantially the same as that published with MSHA's proposed rule to reduce dpm concentrations in underground coal mines (63 FR 17521).

MSHA had this risk assessment independently peer reviewed. The risk assessment presented here incorporates revisions made in accordance with the reviewers' recommendations. The reviewers stated that:

* * * principles for identifying evidence and characterizing risk are thoughtfully set out. The scope of the document is carefully described, addressing potential concerns about the scope of coverage. Reference citations are adequate and up to date. The document is written in a balanced fashion, addressing uncertainties and asking for additional information and comments as appropriate. (Samet and Burke, Nov. 1997).

III.1. Exposures of U.S. Miners

Information about U.S. miner exposures comes from published studies and from additional mine inventories conducted by MSHA since 1993.[6] Previously published studies of U.S. miner exposure to dpm are: Watts (1989, 1992), Cantrell (1992, 1993), Haney (1992), and Tomb and Haney (1995). MSHA has also conducted inventories subsequent to the period covered in Tomb and Haney (1995), and the previously unpublished data are included here. The period covered on which this section is based, is late 1988 through mid 1997.

MSHA's field studies involved measuring dpm concentrations at a total of 48 mines: 25 underground metal and nonmetal (M/NM) mines, 12 underground coal mines, and 11 surface mining operations (both coal and M/NM). At all surface mines and all underground coal mines, dpm measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. With two exceptions, dpm measurements at underground M/NM mines were made using the RCD method (with no submicrometer impactor). Measurements at the two remaining underground M/NM mines were made using the size-selective method, as in coal and surface mines. The various methods of measuring dpm are explained in Part II of this preamble. Weighing errors inherent in the gravimetric analysis required for both size-selective and RCD methods become statistically insignificant at the relatively high dpm concentrations observed. Mines were selected from sites known to have diesel exposures. They do not constitute a random sample of mines, and care was taken in the text not to represent results as applying to the industry as a whole.

Each underground study typically included personal dpm exposure measurements for approximately five production workers. Also, area samples were collected in return airways of underground mines to determine diesel particulate emission rates. Operational information such as the amount and type of equipment, airflow rates, fuel, and maintenance was also recorded. In general, MSHA's studies focused on face production areas of mines, where the highest concentrations of dpm could be expected; but, since some miners do not spend their time in face areas, studies were performed in other areas as well, to get a more complete picture of miner exposure. Because of potential interferences from tobacco smoke in underground M/NM mines, samples were not collected on or near smokers.

Table III–1 summarizes key results from MSHA's studies. The higher concentrations in underground mines were typically found in the haulageways and face areas where numerous pieces of equipment were operating, or where insufficient air was available to ventilate the operation. In production areas and haulageways of underground mines where diesel powered equipment is used, the mean dpm concentration observed was 755 μg/m³. By contrast, in travelways of underground mines where diesel powered equipment is used, the mean dpm concentration (based on 107 samples not included in Table III–1) was 307 μg/m³. In surface mines, the higher concentrations were generally associated with truck drivers and front-end loader operators. The mean dpm concentration observed was less than 200 μg/m³ at all 11 of the surface mines in which measurements were made. More information about the dpm concentrations observed in each sector is presented in the material that follows.

TABLE III–1.—FULL SHIFT DIESEL PARTICULATE MATTER CONCENTRATIONS OBSERVED IN PRODUCTION AREAS AND HAULAGEWAYS OF 48 DIESELIZED U.S. MINES. INTAKE AND RETURN AREA SAMPLES ARE EXCLUDED.

Mine type	Number of samples	Mean exposure μg/m³	Exposure range μg/m³
Surface	45	88	9–380
Underground Coal	226	644	0–3,650
Underground Metal and Nonmetal	331	830	10–5,570

[6] MSHA has only limited information about miner exposures in other countries. Based on 223 personal and area samples, average exposures at 21 Canadian noncoal mines were reported to range from 170 to 1300 μg/m³ (respirable combustible dust), with maximum measurements ranging from 1020 to 3100 μg/m³ (Gangel and Dainty, 1993). Among 622 full shift measurements collected since 1989 in German underground noncoal mines, 91 (15%) exceeded 400 μg/m³ (total carbon) (Dahmann et al., 1996). As explained in Part II of this preamble, 400 μg/m³ (total carbon) corresponds to approximately 500 μg/m³ dpm.

III.1.a. Underground Coal Mines

Approximately 170 out of the 971 existing underground coal mines currently utilize diesel powered equipment. Of these 170 mines, fewer than 20 currently use diesel equipment for face coal haulage. The remaining mines use diesel equipment for transportation, materials handling and other support operations. MSHA focused its efforts in measuring dpm concentrations in coal mines on mines that use diesel powered equipment for face coal haulage. Twelve mines using diesel-powered face haulage were sampled. Mines with diesel powered face haulage were selected because the face is an area with a high concentration of vehicles operating at a heavy duty cycle at the furthest end of the mine's ventilation system.

Diesel particulate levels in underground mines depend on: (1) the amount, size, and workload of diesel equipment; (2) the rate of ventilation; and, (3) the effectiveness of whatever diesel particulate control technology may be in place. In the dieselized mines studied by MSHA, the sections used either two or three diesel coal haulage vehicles. In eastern mines the haulage vehicles were equipped with a nominal 100 horsepower engine. In western mines the haulage vehicles were equipped with a nominal 150 horsepower engine. Ventilation rates ranged from the nameplate requirement, based on the 100–75–50 percent rule (Holtz, 1960), to ten times the nameplate requirement. In most cases, the section airflow was approximately twice the name plate requirement. Control technology involved aftertreatment filters and fuel. Two types of aftertreatment filters were used. These filters included a disposable diesel emission filter (DDEF) and a Wire Mesh Filter (WMF). The DDEF is a commercially available product; the WMF was developed by and only used at one mine. Both low sulfur and high sulfur fuels were used.

Figure III–1 displays the range of exposure measurements obtained by MSHA in the field studies it conducted in underground coal mines. A study normally consisted of collecting samples on the continuous miner operator and ramcar operators for two to three shifts, along with area samples in the haulageways. A total of 142 personal samples and 84 area samples were collected. No statistically significant difference was observed in mean dpm concentration between the personal and area samples.

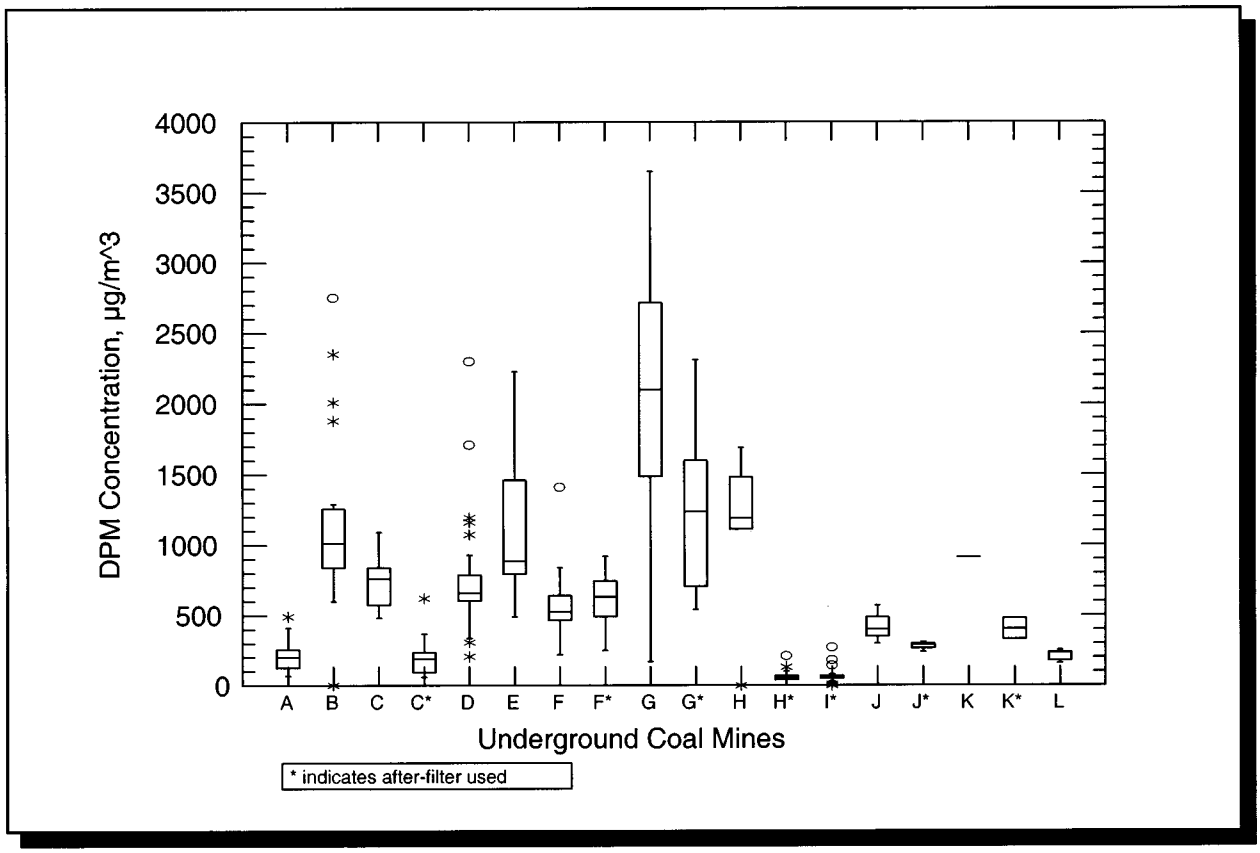

Figure III-1.-- Box plots (Tukey, 1977) for dpm concentrations observed at 12 underground coal mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine. All DPM measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor.

In six mines, measurements were taken both with and without employment of disposable after treatment filters, so that a total of eighteen studies, carried out in twelve mines, are displayed.

Without employment of after treatment filters, average observed dpm concentrations exceeded 500 μg/m³ in eight of the twelve mines and exceeded 1000 μg/m³ in four. [7]

The highest dpm concentrations observed at coal mines were collected at Mine ''G.'' Eight of these samples were collected during employment of DDEF's, and eight were collected while filters were not being employed. Without filters, the mean dpm concentration observed at Mine ''G'' was 2052 μg/m³ (median = 2100 μg/m³). With disposable filters, the mean dropped to 1241 μg/m³ (median = 1235 μg/m³).

Filters were employed in three of the four studies showing median dpm concentration at or below 200 μg/m³. After adjusting for outby sources of dpm, exposures were found to be reduced by up to 95 percent in mines using the DDEF and by up to 50 percent in the mine using the WMF.

[7] In coal mine E, the average as expressed by the mean exceeded 1000 μg/m³, but the median did not.

The higher dpm concentrations observed at the mine using the WMF are attributable partly to the lower section airflow. The only study without filters showing a median concentration at or below 200 μg/m³ was conducted in a mine (Mine ''A'') which had section airflow approximately ten times the nameplate requirement. The section airflow at the mine using the WMF was approximately the nameplate requirement.

III.1.b. Underground Metal and Nonmetal Mines

Currently there are approximately 260 underground M/NM mines in the United States. Nearly all of these mines utilize diesel powered equipment, and twenty-five of those doing so were sampled by MSHA for dpm.[8] The M/NM studies typically included measurements of dpm exposure for dieselized production equipment operators (such as truck drivers, roof bolters, haulage vehicles) on two to three shifts. A number of area samples were also collected. None of the M/NM mines studied were using diesel particulate afterfilters.

[8] MSHA will provide copies of these studies upon request.

Figure III–2 displays the range of dpm concentrations measured by MSHA in the twenty-five underground M/NM mines studied. A total of 254 personal samples and 77 area samples were collected. No statistically significant difference was observed in mean dpm concentration between the personal and area samples. Personal exposures observed ranged from less than 100 μg/m³ to more than 3500 μg/m³. With the exception of Mine ''V'', personal exposures were for face workers. Mine ''V'' did not use dieselized face equipment.

Average observed dpm concentrations exceeded 500 μg/m³ in 17 of the 25 M/NM mines and exceeded 1000 μg/m³ in 12.[9] The highest dpm concentrations observed at M/NM mines were collected at Mine ''E''. Based on 16 samples, the mean dpm concentration observed at Mine ''E'' was 2008 μg/m³ (median = 1835 μg/m³). Twenty-five percent of the dpm measurements at this mine exceeded 2400 μg/m³. All four of these were based on personal samples.

[9] At M/NM mines C, I, J, and P, the average as expressed by the mean exceeded 1000 μg/m³ but the median did not. At M/NM mines H and S, the median exceeded 1000 μg/m³ but the mean did not. At M/NM mine K, the mean exceeded 500 μg/m³, but the median did not.

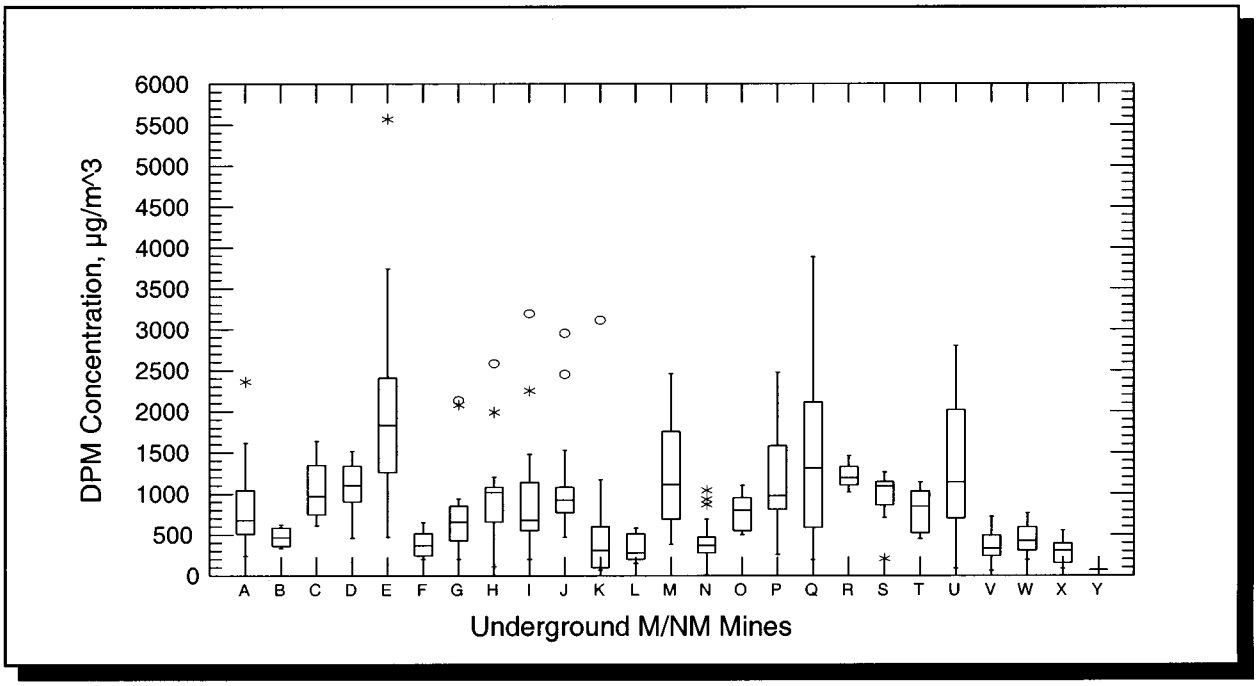

Figure III-2.-- Box plots (Tukey, 1977) for dpm concentrations observed at 25 underground metal and nonmetal mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine. Measurements at mines other than "D" and "T" were made using RCD method. Measurements at mines "D" and "T" were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. Because of potential interferences from cigarette smoke, samples were not collected on or near smokers.

As with underground coal mines, dpm levels in underground M/NM mines are related to the amount and size of equipment, to the ventilation rate, and to the effectiveness of the diesel particulate control technology employed. In the dieselized M/NM mines studied by MSHA, front-end-loaders were used either to load ore onto trucks or to haul and load ore onto belts. Additional pieces of diesel powered support equipment, such as bolters and mantrips, were also used at the mines. The typical piece of production equipment was rated at 150 to 350 horsepower.

Ventilation rates in the M/NM mines studied mostly ranged from 100 to 200 cfm per horsepower of equipment. In only a few of the mines inventoried did ventilation exceed 200 cfm/hp. For single-level mines, working areas were ventilated in series, i.e., the exhaust air from one area became the intake for the next working area. For multi-level mines, each level typically had a separate fresh air supply. One or two working areas could be on a level. Control technology used to reduce diesel particulate emissions in mines inventoried included oxidation catalytic converters and engine maintenance programs. Both low sulfur and high sulfur fuel were used; some mines used aviation grade low sulfur fuel.

III.1.c. Surface Mines

Currently, there are approximately 12,200 surface mining operations in the United States. The total consists of approximately 1,700 coal mines and 10,500 M/NM mines. Virtually all of these mines utilize diesel powered equipment.

MSHA conducted diesel particulate studies at eleven surface mining operations: eight coal mines and three M/NM mines. To help select those surface facilities likely to have significant dpm concentrations, MSHA first made a visual examination (based on blackness of the filter) of surface mine respirable dust samples collected during a November 1994 study of surface coal mines. This preliminary screening of samples indicated that higher exposures to diesel particulate are typically associated with front-end-loader operators and haulage-truck operators; accordingly, sampling focused on these operations. A total of 45 samples were collected.

Figure III–3 displays the range of dpm concentrations measured at the eleven surface mines. The average dpm concentration observed was less than 200 µg/m^3 at all mines sampled. The maximum dpm concentration observed was less than or equal to 200 µg/m^3 in 8 of the 11 mines (73%). The surface mine studies indicate that even when sampling is performed at the areas of surface mines believed most likely to have high exposures, dpm concentrations are generally less than 200 µg/m^3.

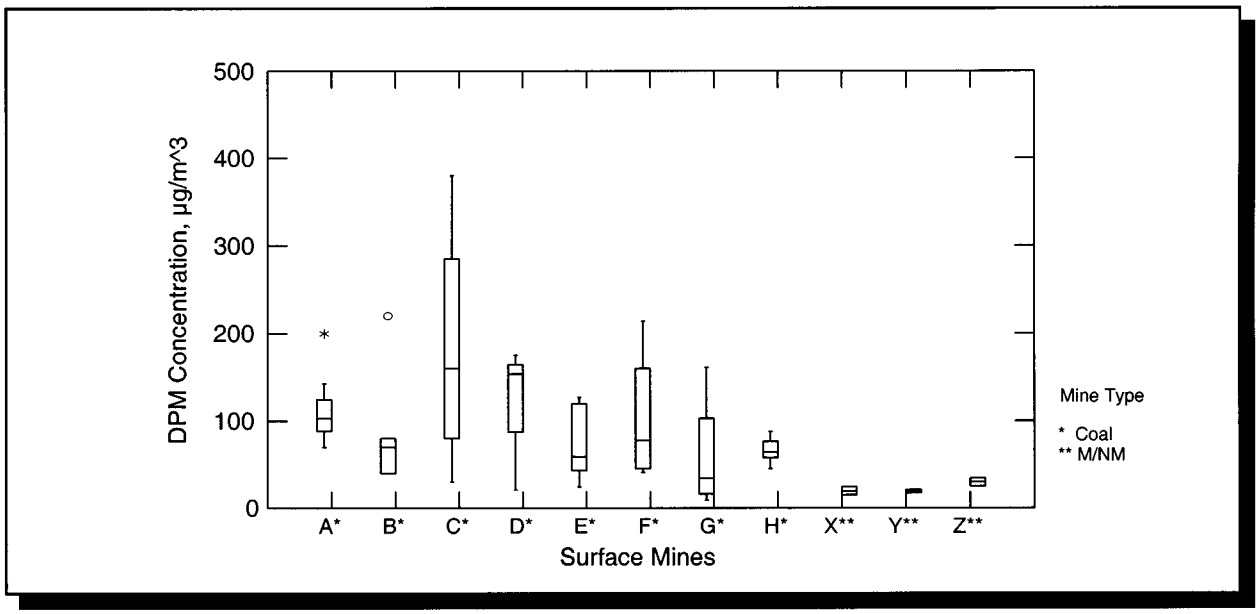

Figure III-3.--Box plots for dpm concentrations observed at 11 surface mines. Top and bottom of each box represent upper and lower quartiles, respectively. "Belt" inside box represents median. Vertical lines span nearly all measurements. Isolated points are outliers, representing unusually high or low measurements compared to other observations at the same mine (Tukey, 1977). All DPM measurements were made using the size-selective method, based on gravimetric determination of the amount of submicrometer dust collected with an impactor. Because of potential interferences from cigarette smoke, samples were not collected on smokers who worked inside enclosures.

III.1.d. Comparison of Miner Exposures to Exposures of Other Groups

Occupational exposure to diesel particulate primarily originates from industrial operations employing equipment powered with diesel engines. Diesel engines are used to power ships, locomotives, heavy duty trucks, heavy machinery, as well as a small number of light-duty passenger cars and trucks. NIOSH estimates that approximately 1.35 million workers are occupationally exposed to the combustion products of diesel fuel in approximately 80,000 workplaces in the United States. Workers who are likely to be exposed to diesel emissions include: mine workers; bridge and tunnel workers; railroad workers; loading dock workers; truck drivers; fork-lift drivers; farm workers; and, auto, truck, and bus maintenance garage workers (NIOSH, 1988). Besides miners, groups for which occupational exposures have been reported and health effects have been studied include dock workers, truck drivers, and railroad workers.

As estimated by the geometric mean, median occupational exposures reported for dock workers either operating or otherwise exposed to diesel fork lift trucks have ranged from 23 to 55 µg/m^3, as measured by submicrometer elemental carbon (NIOSH, 1990; Zaebst et al., 1991). Watts (1995) states that "elemental carbon generally accounts for about 40% to 60% of diesel particulate mass." Assuming that, on average, the submicrometer elemental carbon constituted approximately 50% by mass of the whole diesel particulate, this would correspond to a range of 46 to 110 µg/m^3 in median dpm concentrations at various docks.

In a study of dpm exposures in the trucking industry, Zaebst et al. (1991) reported geometric mean concentrations of submicrometer carbon ranging from 2 to 7 µg/m^3 for drivers to 5 to 28 µg/m^3 for mechanics, depending on weather conditions. Again assuming that, on average, the mass concentration of whole diesel particulate is about twice that of submicrometer elemental carbon, the corresponding range of median dpm concentrations would be 4 to 56 µg/m^3.

Exposures of railroad workers to dpm were estimated by Woskie et al. (1988) and Schenker et al. (1990). As measured by total respirable particulate matter other than cigarette smoke, Woskie et al. reported geometric mean concentrations for various occupational categories of exposed railroad workers ranging from 49 to 191 µg/m^3.

Figure III–4 shows the range of median dpm concentrations observed for mine workers at different mines compared to the range of median concentrations estimated for dock workers (including forklift drivers at loading docks), truck drivers and mechanics, railroad workers, and urban ambient air.[10] The range for ambient air, 1 to 10 µg/m^3, was obtained from Cass and Gray (1995). For dock workers, truck drivers, and railroad workers, the estimated range of median exposures is respectively 46 to 110 µg/m^3, 4 to 56 µg/m^3, and 49 to 191 µg/m^3. The range of medians observed at different underground coal mines is 55 to 2100 µg/m^3, with filters employed at mines showing the lower concentrations. For underground M/NM mines, the corresponding range is 68 to 1835

[10] In the studies reviewed, investigators have used various statistical parameters, such as mean, median, or geometric mean, to summarize the dpm concentrations observed. Since the raw data are not available, MSHA was not able to summarize the data in exactly the same way for each category depicted in Figure III–4.

μg/m³, and for surface mines it is 19 to 160 μg/m³.

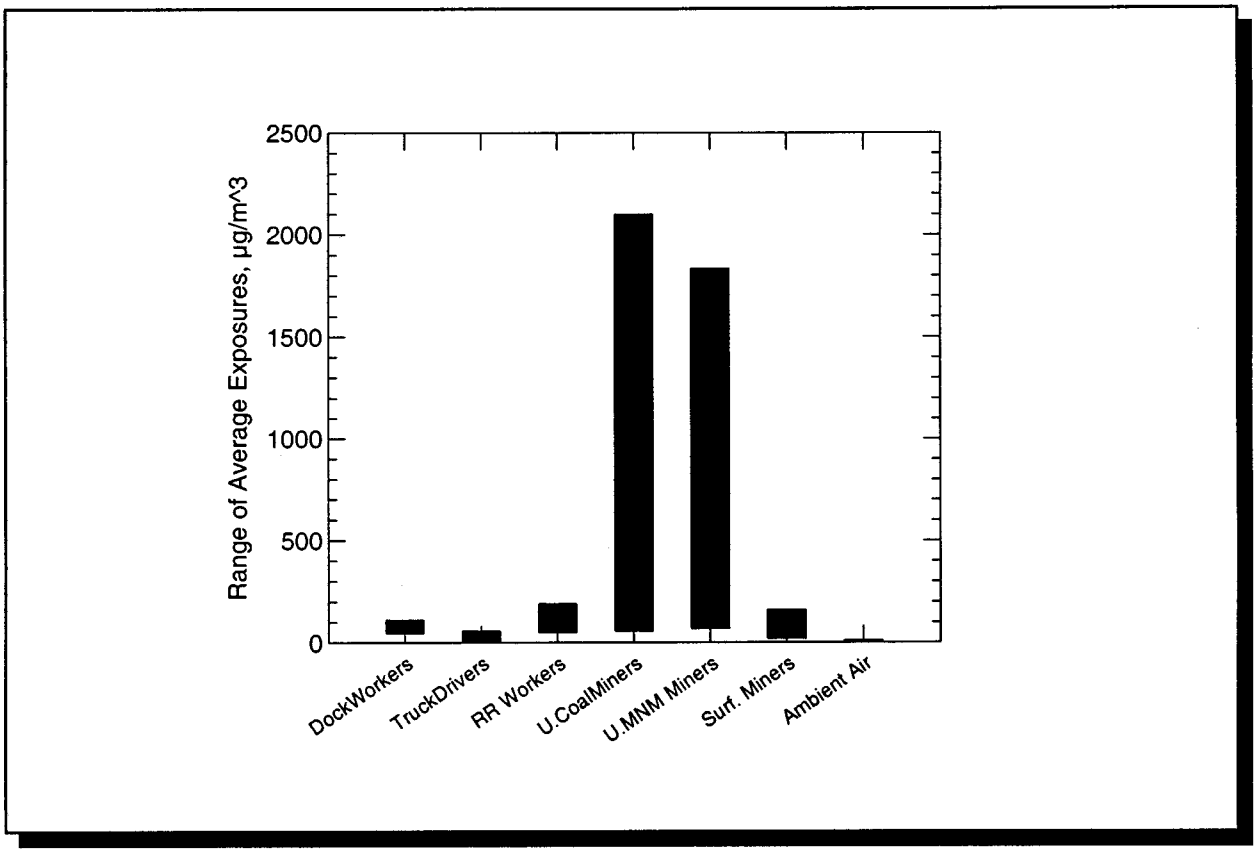

Figure III-4.--Range of average dpm exposures observed at various mines for underground and surface miners compared to range of average exposures reported for other occupations and for urban ambient air. Averages are represented by median observed within mines for mine workers, by median as estimated with geometric mean reported for other occupations, and, for ambient air in urban environments, by the monthly mean estimated for different months and locations in Southern California. The range estimated for urban ambient air is roughly 1 to 10 $\mu g/m^3$.

As shown in Figure III–4, some miners are exposed to far higher concentrations of dpm than are any other populations for higher concerntrations of dpm than are any other populations for which data have been collected. Indeed, median dpm concentrations observed in some underground mines are up to 200 times as high as average environmental exposures in the most heavily polluted urban areas, and up to 10 times as high as median exposures estimated for the most heavily exposed workers in other occupational groups.

III.2. Health Effects Associated With DPM Exposures

This section reviews all the various health effects (of which MSHA is aware) that may be associated with exposure to diesel particulate. The review is divided into three main sections: acute effects, such as diminished pulmonary function and eye irritation; chronic effects, such as lung cancer; and mechanisms of toxicity. Prior to that review, however, the relevance of certain types of information will be considered. This discussion will address the relevance of health effects observed in animals, health effects that are reversible, and health effects associated with fine particulate matter in the ambient air.

III.2.a. Relevancy Considerations

III.2.a.i. Relevance of Health Effects Observed in Animals

Since the lungs of different species may react differently to particle inhalation, it is necessary to treat the results of animal studies with some caution. Evidence from animal studies can nevertheless be valuable, and those respondents to MSHA's ANPRM who addressed this question urged consideration of all animal studies related to the health effects of diesel exhaust.

Unlike humans, laboratory animals are bred to be homogeneous and can be randomly selected for either non-exposure or exposure to varying levels of a potentially toxic agent. This permits setting up experimental and control groups of animals that do not differ biologically prior to exposure. The consequences of exposure can then be determined by comparing responses in the experimental and control groups. After a prescribed duration of deliberate exposure, laboratory animals can also be sacrificed, dissected, and examined. This can contribute to an understanding of mechanisms by which inhaled

particles may exert their effects on health. For this reason, discussion of the animal evidence is placed in the section entitled ''Mechanisms of Toxicity'' below.

Animal evidence also can help isolate the cause of adverse health effects observed among humans exposed to a variety of potentially hazardous substances. If, for example, the epidemiological data are unable to distinguish between several possible causes of increased risk of disease in a certain population, then controlled animal studies may provide evidence useful in suggesting the most likely explanation—and provide that information years in advance of definitive evidence from human observations.

Furthermore, results from animal studies may also serve as a check on the credibility of observations from epidemiological studies of human populations. If a particular health effect is observed in animals under controlled laboratory conditions, this tends to corroborate observations of similar effects in humans.

Accordingly, MSHA believes that judicious use of evidence from animal studies is appropriate. The extent to which MSHA relies upon such evidence to draw specific conclusions will be discussed below in connection with those conclusions.

III.2.a.ii. Relevance of Health Effects That are Reversible

Some reported health effects associated with dpm are apparently reversible—i.e., if the worker is moved away from the source for a few days, the health problem goes away. A good example is eye irritation.

In response to the ANPRM, questions were raised as to whether so-called ''reversible'' effects can constitute a ''material'' impairment. For example, one commenter argued that ''it is totally inappropriate for the agency to set permissible exposure limits based on temporary, reversible sensory irritation'' because such effects cannot be a ''material'' impairment of health or functional capacity within the definition of the Mine Act (American Mining Congress, 87–0–21, Executive Summary, p. 1, and Appendix A).

MSHA does not agree with this categorical view. Although the legislative history of the Mine Act is silent concerning the meaning of the term ''material impairment of health or functional capacity,'' and the issue has not been litigated within the context of the Mine Act, the statutory language about risk in the Mine Act is similar to that under the OSH Act. A similar argument was dispositively resolved in favor of the Occupational Safety and Health Administration (OSHA) by the 11th Circuit Court of Appeals in *AFL–CIO* v. *OSHA*, 965 F.2d 962, 974 (1992) (popularly known as the ''PEL's'' decision).

In that case, OSHA proposed new limits on 428 diverse substances. It grouped these into 18 categories based upon the primary health effects of those substances: e.g., neuropathic effects, sensory irritation, and cancer. (54 FR 2402). Challenges to this rule included the assertion that a ''sensory irritation'' was not a ''material impairment of health or functional capacity'' which could be regulated under the OSH Act. Industry petitioners argued that since irritant effects are transient in nature, they did not constitute a ''material impairment.'' The Court of Appeals decisively rejected this argument.

The court noted OSHA's position that effects such as stinging, itching and burning of the eyes, tearing, wheezing, and other types of sensory irritation can cause severe discomfort and be seriously disabling in some cases. Moreover, there was evidence that workers exposed to these sensory irritants could be distracted as a result of their symptoms, thereby endangering other workers and increasing the risk of accidents. (Id. at 974). This evidence included information from NIOSH about the general consequences of sensory irritants on job performance, as well as testimony by commenters on the proposed rule supporting the view that such health effects should be regarded as material health impairments. While acknowledging that ''irritation'' covers a spectrum of effects, some of which can be trivial, OSHA had concluded that the health effects associated with exposure to these substances warranted action—to ensure timely medical treatment, reduce the risks from increased absorption, and avoid a decreased resistance to infection (Id at 975). Finding OSHA's evaluation adequate, the Court of Appeals rejected petitioners' argument and stated the following:

> We interpret this explanation as indicating that OSHA finds that although minor irritation may not be a material impairment, there is a level at which such irritation becomes so severe that employee health and job performance are seriously threatened, even though those effects may be transitory. We find this explanation adequate. OSHA is not required to state with scientific certainty or precision the exact point at which each type of sensory or physical irritation becomes a material impairment. Moreover, section 6(b)(5) of the Act charges OSHA with addressing all forms of ''material impairment of health or functional capacity,'' and not exclusively ''death or serious physical harm'' or ''grave danger'' from exposure to toxic substances. See 29 U.S.C. 654(a)(1), 655(c). [Id. at 974].

III.2.a.iii. Relevance of Health Effects Associated with Fine Particulate Matter in Ambient Air

There have been many studies in recent years designed to determine whether the mix of particulate matter in ambient air is harmful to health. The evidence linking particulates in air pollution to health problems has long been compelling enough to warrant direction from the Congress to limit the concentration of such particulates (see part II, section 5 of this preamble). In recent years, the evidence of harmful effects due to airborne particulates has increased, and, moreover, has suggested that ''fine'' particulates (i.e., particles less than 2.5 μm in diameter) are more strongly associated than ''coarse'' particulates (i.e., respirable particles greater than 2.5 μm in diameter) with the adverse health effects observed (EPA, 1996).

MSHA recognizes that there are two difficulties involved in utilizing the evidence from such studies in assessing risks to miners from occupational dpm exposures. First, although dpm is a fine particulate, ambient air also contains fine particulates other than dpm. Therefore, health effects associated with exposures to fine particulate matter in air pollution studies are not associated specifically with exposures to dpm or any other one kind of fine particulate matter. Second, observations of adverse health effects in segments of the general population do not necessarily apply to the population of miners. Since, due to age and selection factors, the health of miners differs from that of the public as a whole, it is possible that fine particles might not affect miners, as a group, to the same extent as the general population.

Nevertheless, there are compelling reasons to consider this body of evidence. Since dpm is a type of respirable particle, information about health effects associated with exposures to respirable particles in general, and especially to fine particulate matter, is certainly relevant, even if difficult to apply directly to dpm exposures. Adverse health effects in the general population have been observed at ambient atmospheric particulate concentrations well below those studied in occupational settings. Furthermore, there is extensive literature showing that occupational dust exposures contribute to Chronic Obstructive Pulmonary Diseases (COPD), thereby compromising the pulmonary reserve of

some miners, and that miners experience COPD at a significantly higher rate than the general population (Becklake 1989, 1992; Oxman 1993; NIOSH 1995). This would appear to place affected miners in a subpopulation specifically identified as susceptible to the adverse health effects of respirable particle pollution (EPA, 1996). The Mine Act requires that standards ''* * * most adequately assure on the basis of the best available evidence that *no miner* suffer material impairment of health or functional capacity * * *'' (Section 101(a)(6), emphasis added).

In sum, MSHA believes it would be a serious omission to ignore the body of evidence from air pollution studies and the Agency is, therefore, taking that evidence into account. The Agency would, however, welcome additional scientific information and analysis on ways of applying this body of evidence to miners experiencing acute and/or chronic dpm exposures. MSHA is especially interested in receiving information on whether the elevated prevalence of COPD among miners makes them, as a group, highly susceptible to the harmful effects of fine particulate air pollution, including dpm.

III.2.b. Acute Health Effects

Information relating to the acute health effects of dpm includes anecdotal reports of symptoms experienced by exposed miners, studies based on exposures to diesel emissions, and studies based on exposures to particulate matter in the ambient air. These will be discussed in turn.

III.2.b.i. Symptoms Reported by Exposed Miners

Miners working in mines with diesel equipment have long reported adverse effects after exposure to diesel exhaust. For example, at the workshops on dpm conducted in 1995, a miner reported headaches and nausea among several operators after short periods of exposure (dpm Workshop; Mt. Vernon, IL, 1995). Another miner reported that the smoke from equipment using improper fuel or not well maintained is an irritant to nose and throat and impairs vision. ''We've had people sick time and time again * * * at times we've had to use oxygen for people to get them to come back around to where they can feel normal again.'' (dpm Workshop; Beckley, WV, 1995). Other miners (dpm Workshops; Beckley, WV, 1995; Salt Lake City, UT, 1995), reported similar symptoms in the various mines where they worked.

Kahn *et al.* (1988) conducted a study of the prevalence and seriousness of such complaints, based on United Mine Workers of America records and subsequent interviews with the miners involved. The review involved reports at five underground coal mines in Utah and Colorado between 1974 and 1985. Of the 13 miners reporting symptoms: 12 reported mucous membrane irritation, headache and light-headiness; eight reported nausea; four reported heartburn; three reported vomiting and weakness, numbness, and tingling in extremities; two reported chest tightness; and two reported wheezing (although one of these complained of recurrent wheezing without exposure). All of these incidents were severe enough to result in lost work time due to the symptoms (which subsided within 24 to 48 hours).

MSHA welcomes additional information about such effects including information from medical personnel who have treated miners and information on work time lost, together with information about the exposures of miners for whom such effects have been observed. The Agency would be especially interested in comparisons of effects observed in workers subjected to filtered exhaust as compared to those subjected to unfiltered exhaust.

III.2.b.ii. Studies Based on Exposures to Diesel Emissions

Several scientific studies have been conducted to investigate acute effects of exposure to diesel emissions.

In a clinical study (Battigelli, 1965), volunteers were exposed to different levels of diesel exhaust and then the degree of eye irritation was measured. Exposure for ten minutes to diesel exhaust produced ''intolerable'' irritation in some subjects while the average irritation score was midway between ''some'' irritation and a ''conspicuous but tolerable'' irritation level. Cutting the exposure by 50% significantly reduced the irritation.

In a study of underground iron ore miners exposed to diesel emissions, Jörgensen and Svensson (1970), found no difference in spirometry measurements taken before and after a work shift. Similarly, Ames *et al.* (1982), in a study of coal miners exposed to diesel emissions, detected no statistically significant relationship between exposure and pulmonary function. However, the authors noted that the lack of a positive result might be due to the low concentrations of diesel emissions involved.

Gamble *et al.* (1978) did observe decreases in pulmonary function over a single shift in salt miners exposed to diesel emissions. Pulmonary function appeared to deteriorate in relation to the concentration of diesel exhaust, as indicated by NO_2; but this effect was confounded by the presence of NO_2 due to the use of explosives.

Gamble *et al.* (1987a) assessed response to diesel exposure among 232 bus garage workers by means of a questionnaire and before- and after-shift spirometry. No significant relationship was detected between diesel exposure and change in pulmonary function. However, after adjusting for age and smoking status, a significantly elevated prevalence of reported symptoms was found in the high-exposure group. The strongest associations with exposure were found for eye irritation, labored breathing, chest tightness, and wheeze. The questionnaire was also used to compare various acute symptoms reported by the garage workers and a similar population of workers at a lead acid battery plant who were not exposed to diesel fumes. The prevalence of work-related eye irritations, headaches, difficult or labored breathing, nausea, and wheeze was significantly higher in the diesel bus garage workers, but the prevalence of work-related sneezing was significantly lower.

Ulfvarson *et al.* (1987) studied effects over a single shift on 47 stevedores exposed to dpm at particle concentrations ranging from 130 $\mu g/m^3$ to 1000 $\mu g/m^3$. A statistically significant loss of pulmonary function was observed, with recovery after 3 days of no occupational exposure.

To investigate whether removal of the particles from diesel exhaust might reduce the ''acute irritative effect on the lungs'' observed in their earlier study, Ulfvarson and Alexandersson (1990) compared pulmonary effects in a group of 24 stevedores exposed to unfiltered diesel exhaust to a group of 18 stevedores exposed to filtered exhaust, and to a control group of 17 occupationally unexposed workers. Workers in all three groups were nonsmokers and had normal spirometry values, adjusted for sex, age, and height, prior to the experimental workshift.

In addition to confirming the earlier observation of significantly reduced pulmonary function after a single shift of occupational exposure, the study found that the stevedores in the group exposed only to filtered exhaust had 50–60% less of a decline in forced vital capacity (FVC) than did those stevedores who worked with unfiltered equipment. Similar results were observed for a subgroup of six stevedores who were exposed to filtered exhaust on one shift and unfiltered exhaust on another. No loss of pulmonary function was observed for the unexposed control group. The

authors suggested that these results ''support the idea that the irritative effects of diesel exhausts to the lungs [sic] is the result of an interaction between particles and gaseous components and not of the gaseous components alone.'' They concluded that ''* * * it should be a useful practice to filter off particles from diesel exhausts in work places even if potentially irritant gases remain in the emissions.''

Rudell *et al.*, (1996) carried out a series of double-blind experiments on 12 healthy, non-smoking subjects to investigate whether a particle trap on the tailpipe of an idling diesel engine would reduce acute effects of diesel exhaust, compared with exposure to unfiltered exhaust. Symptoms associated with exposure included headache, dizziness, nausea, tiredness, tightness of chest, coughing, and difficulty in breathing, but the most prominent were found to be irritation of the eyes and nose, and a sensation of unpleasant smell. Among the various pulmonary function tests performed, exposure was found to result in significant changes only as measured by increased airway resistance and specific airway resistance. The ceramic wall flow particle trap reduced the number of particles by 46 percent, but resulted in no significant attenuation of symptoms or lung function effects. The authors concluded that diluted diesel exhaust caused increased symptoms of the eyes and nose, unpleasant smell, and bronchoconstriction, but that the 46 percent reduction in median particle number concentration observed was not sufficient to protect against these effects in the populations studied.

Wade and Newman (1993) documented three cases in which railroad workers developed persistent asthma following exposure to diesel emissions while riding immediately behind the lead engines of trains having no caboose. None of these workers were smokers or had any prior history of asthma or other respiratory disease. Although this is the only published report MSHA knows of directly relating exposure to diesel emissions with the development of asthma, there have been a number of recent studies indicating that dpm exposure can induce bronchial inflammation and respiratory immunological allergic responses in humans. These are reviewed in Peterson and Saxon (1996) and Diaz-Sanchez (1997).

III.2.b.iii. Studies Based on Exposures to Particulate Matter in Ambient Air

As early as the 1930's, as a result of an incident in Belgium's industrial Meuse Valley, it was known that large increases in particulate air pollution, created by winter weather inversions, could be associated with large simultaneous increases in mortality and morbidity. More than 60 persons died from this incident, and several hundred suffered respiratory problems. The mortality rate during the episode was more than ten times higher than normal, and it was estimated that over 3,000 sudden deaths would occur if a similar incident occurred in London. Although no measurements of pollutants in the ambient air during the episode are available, high PM levels were obviously present (EPA, 1996).

A significant elevation in particulate matter (along with SO_2 and its oxidation products) was measured during a 1948 incident in Donora, PA. Of the Donora population, 42.7 percent experienced some adverse health effect, mainly due to irritation of the respiratory tract. Twelve percent of the population reported difficulty in breathing, with a steep rise in frequency as age progressed to 55 years (Schrenk, 1949).

Approximately as projected by Firket (1931), an estimated 4,000 deaths occurred in response to a 1952 episode of extreme air pollution in London. The nature of these deaths is unknown, but there is clear evidence that bronchial irritation, dyspnea, bronchospasm, and, in some cases, cyanosis occurred with unusual prevalence (Martin, 1964).

These three episodes ''left little doubt about causality in regard to the induction of serious health effects by very high concentrations of particle-laden air pollutant mixtures'' and stimulated additional research to characterize exposure-response relationships (EPA, 1996). Based on several analyses of the 1952 London data, along with several additional acute exposure mortality analyses of London data covering later time periods, the U.S. Environmental Protection Agency (EPA) concluded that increased risk of mortality is associated with exposure to particulate and SO_2 levels in the range of 500–1000 $\mu g/m^3$. The EPA also concluded that relatively small, but statistically significant increases in mortality risk exist at particulate levels below 500 $\mu g/m^3$, with no indications of any specific threshold level yet indicated at lower concentrations (EPA, 1986).

Subsequently, between 1986 and 1996, increasingly sophisticated particulate measurements and statistical techniques have enabled investigators to address these questions more quantitatively. The studies on acute effects carried out since 1986 are reviewed in the 1996 EPA Air Quality Criteria for Particulate Matter, which forms the basis for the discussion below (EPA, 1996).

At least 21 studies have been conducted that evaluate associations between acute mortality and morbidity effects and various measures of fine particulate levels in the ambient air. These studies are identified in Tables III–2 and III–3. Table III–2 lists 11 studies that measured primarily fine particulate matter using filter-based optical techniques and, therefore, provide mainly qualitative support for associating observed effects with fine particles. Table III–3 lists quantitative results from 10 studies that reported gravimetric measurements of either the fine particulate fraction or of components, such as sulfates, that serve as indicators.

A total of 38 studies examining relationships between short-term particulate levels and increased mortality, including nine with fine particulate measurements, were published between 1988 and 1996 (EPA, 1996). Most of these found statistically significant positive associations. Daily or several-day elevations of particulate concentrations, at average levels as low as 18–58 $\mu g/m^3$, were associated with increased mortality, with stronger relationships observed in those with preexisting respiratory and cardiovascular disease. Overall, these studies suggest that an increase of 50 $\mu g/m^3$ in the 24-hour average of PM_{10} is associated with a 2.5 to 5-percent increase in the risk of mortality in the general population. Based on Schwartz et al. (1996), the relative risk of mortality in the general population increases by about 2.6 to 5.5 percent per 25 $\mu g/m^3$ of fine particulate ($PM_{2.5}$) (EPA, 1996).

A total of 22 studies were published on associations between short-term particulate levels and hospital admissions, outpatient visits, and emergency room visits for respiratory disease, Chronic Obstructive Pulmonary Disease (COPD), pneumonia, and heart disease (EPA, 1996). Fifteen of these studies were focussed on the elderly. Of the seven that dealt with all ages (or in one case, persons less than 65 years old), all showed positive results. All of the five studies relating fine particulate measurements to increased hospitalization, listed in Tables III–2 and III–3, dealt with general age populations and showed statistically significant associations. The estimated increase in risk ranges from 3 to 16 percent per 25 $\mu g/m^3$ of fine particulate. Overall, these studies are indicative of acute morbidity effects being related to fine particulate matter and support the mortality findings.

Most of the 14 published quantitative studies on ambient particulate exposures and acute respiratory symptoms were restricted to children (EPA, 1996). Although they generally showed positive associations, and may be of considerable biological relevance, evidence of toxicity in children is not necessarily applicable to adults. The few studies on adults have not produced statistically significant evidence of a relationship.

Fourteen studies since 1982 have investigated associations between ambient particulate levels and loss of pulmonary function (EPA, 1996). In general, these studies suggest a short term effect, especially in symptomatic groups such as asthmatics, but most were carried out on children only. In a study of adults with mild COPD, Pope and Kanner (1993) found a 29±10 ml decrease in 1-second Forced Expiratory Volume (FEV_1) per 50 μg/m^3 increase in PM_{10}, which is similar in magnitude to the change generally observed in the studies on children. In another study of adults, with PM_{10} ranging from 4 to 137 μg/m^3, Dusseldorp et al. (1995) found 45 and 77 ml/sec decreases, respectively, for evening and morning Peak Expiratory Flow Rate (PEFR) per 50 μg/m^3 increase in PM_{10} (EPA, 1996). In the only study carried out on adults that specifically measured fine particulate ($PM_{2.5}$), Perry et al. (1983) did not detect any association of exposure with loss of pulmonary function. This study, however, was conducted on only 24 adults (all asthmatics) exposed at relatively low concentrations of $PM_{2.5}$ and, therefore, had very little power to detect any such association.

III.2.c. Chronic Health Effects

During the 1995 dpm workshops, miners reported observable adverse health effects among those who have worked a long time in dieselized mines. For example, a miner (dpm Workshop; Salt Lake City, UT, 1995), stated that miners who work with diesel ''have spit up black stuff every night, big black—what they call black (expletive) * * * [they] have the congestion every night * * * the 60-year-old man working there 40 years.'' Scientific investigation of the chronic health effects of dpm exposure includes studies based specifically on exposures to diesel emissions and studies based more generally on exposures to fine particulate matter in the ambient air. Only the evidence from human studies will be addressed in this section. Data from genotoxicology studies and studies on laboratory animals will be discussed later, in the section on potential mechanisms of toxicity.

III.2.c.i. Studies Based on Exposures to Diesel Emissions

The discussion will summarize the epidemiological literature on chronic effects other than cancer, and then concentrate on the epidemiology of cancer in workers exposed to dpm.

III.2.c.i.A. Chronic Effects Other Than Cancer

There have been a number of epidemiological studies that investigated relationships between diesel exposure and the risk of developing persistent respiratory symptoms (i.e., chronic cough, chronic phlegm, and breathlessness) or measurable loss in lung function. Three studies involved coal miners (Reger *et al.,* 1982; Ames *et al.,* 1984; Jacobson *et al.,* 1988); four studies involved metal and nonmetal miners (Jörgenson & Svensson, 1970; Attfield, 1979; Attfield *et al.,* 1982; Gamble *et al.,* 1983). Three studies involved other groups of workers—railroad workers (Battigelli *et al.,* 1964), bus garage workers (Gamble *et al.,* 1987), and stevedores (Purdham *et al.,* 1987).

Reger *et al.* (1982) examined the prevalence of respiratory symptoms and the level of pulmonary function among more than 1,600 underground and surface coal miners, comparing results for workers (matched for smoking status, age, height, and years worked underground) at diesel and non-diesel mines. Those working at underground dieselized mines showed some increased respiratory symptoms and reduced lung function, but a similar pattern was found in surface miners who presumably would have experienced less diesel exposure. Miners in the dieselized mines, however, had worked underground for less than 5 years on average.

In a study of 1,118 coal miners, Ames *et al.* (1984) did not detect any pattern of chronic respiratory effects associated with exposure to diesel emissions. The analysis, however, took no account of baseline differences in lung function or symptom prevalence, and the authors noted a low level of exposure to diesel-exhaust contaminants in the exposed population.

In a cohort of 19,901 coal miners investigated over a 5-year period, Jacobsen *et al.* (1988) found increased work absence due to self-reported chest illness in underground workers exposed to diesel exhaust, as compared to surface workers, but found no correlation with their estimated level of exposure.

Jörgenson & Svensson (1970) found higher rates of chronic productive bronchitis, for both smokers and nonsmokers, among underground iron ore miners exposed to diesel exhaust as compared to surface workers at the same mine. No significant difference was found in spirometry results.

Using questionnaires collected from 4,924 miners at 21 metal and nonmetal mines, Attfield (1979) evaluated the effects of exposure to silica dust and diesel exhaust and obtained inconclusive results with respect to diesel exposure. For both smokers and non-smokers, miners occupationally exposed to diesel for five or more years showed an elevated prevalence of persistent cough, persistent phlegm, and shortness of breath, as compared to miners exposed for less than five years, but the differences were not statistically significant. Four quantitative indicators of diesel use failed to show consistent trends with symptoms and lung function.

Attfield *et al.* (1982) reported on a medical surveillance study of 630 white male miners at 6 potash mines. No relationships were found between measures of diesel use or exposure and various health indices, based on self-reported respiratory symptoms, chest radiographs, and spirometry.

In a study of salt miners, Gamble and Jones (1983) observed some elevation in cough, phlegm, and dyspnea associated with mines ranked according to level of diesel exhaust exposure. No association between respiratory symptoms and estimated cumulative diesel exposure was found after adjusting for differences among mines. However, since the mines varied widely with respect to diesel exposure levels, this adjustment may have masked a relationship.

Battigelli *et al.* (1964) compared pulmonary function and complaints of respiratory symptoms in 210 railroad repair shop employees, exposed to diesel for an average of 10 years, to a control group of 154 unexposed railroad workers. Respiratory symptoms were less prevalent in the exposed group, and there was no difference in pulmonary function; but no adjustment was made for differences in smoking habits.

In a study of workers at four diesel bus garages in two cities, Gamble *et al.* (1987b) investigated relationships between tenure (as a surrogate for cumulative exposure) and respiratory symptoms, chest radiographs, and pulmonary function. The study population was also compared to an unexposed control group of workers with similar socioeconomic background. After indirect adjustment for age, race, and smoking, the exposed workers showed an increased prevalence of cough, phlegm, and wheezing, but no

association was found with tenure. Age- and height-adjusted pulmonary function was found to decline with duration of exposure, but was elevated on average, as compared to the control group. The number of positive radiographs was too small to support any conclusions. The authors concluded that the exposed workers may have experienced some chronic respiratory effects.

Purdham *et al.* (1987) compared baseline pulmonary function and respiratory symptoms in 17 exposed stevedores to a control group of 11 port office workers. After adjustment for smoking, there was no statistically significant difference in self-reported respiratory symptoms between the two groups. However, after adjustment for smoking, age, and height, exposed workers showed lower baseline pulmonary function, consistent with an obstructive ventilatory defect, as compared to both the control group and the general metropolitan population.

In a recent review of these studies, Cohen and Higgins (1995) concluded that they did not provide strong or consistent evidence for chronic, nonmalignant respiratory effects associated with occupational exposure to diesel exhaust. These reviewers stated, however, that ''several studies are suggestive of such effects * * * particularly when viewed in the context of possible biases in study design and analysis.'' MSHA agrees that the studies are inconclusive but suggestive of possible effects.

III.2.c.i.B. Cancer

Because diesel exhaust has long been known to contain carcinogenic compounds (e.g., benzene in the gaseous fraction and benzopyrene and nitropyrene in the dpm fraction), a great deal of research has been conducted to determine if occupational exposure to diesel exhaust actually results in an increased risk of cancer. Evidence that exposure to dpm increases the risk of developing cancer comes from three kinds of studies: human studies, genotoxicity studies, and animal studies. MSHA places the most weight on evidence from the human epidemiological studies and views the genotoxicological and animal studies as lending support to the epidemiological evidence.

In the epidemiological studies, it is generally impossible to disassociate exposure to dpm from exposure to the gasses and vapors that form the remainder of whole diesel exhaust. However, the animal evidence shows no significant increase in the risk of lung cancer from exposure to the gaseous fraction alone (Heinrich *et al.*, 1986; Iwai *et al.*, 1986; Brightwell *et al.*, 1986). Therefore, dpm, rather than the gaseous fraction of diesel exhaust, is assumed be the agent associated with an excess risk of lung cancer.

III.2.c.i.B.i. Lung Cancer

Beginning in 1957, at least 43 epidemiological studies have been published examining relationships between diesel exhaust exposure and the prevalence of lung cancer. The most recent published reviews of these studies are by Mauderly (1992), Cohen and Higgins (1995), Stöber and Abel (1996), Morgan et al. (1997), and Dawson et al. (1998). In addition, in response to the ANPRM, several commenters provided MSHA with their own reviews. Two comprehensive statistical ''meta-analyses'' of the epidemiological literature are also available: Lipsett and Alexeeff (1998) and Bhatia et al. (1998). These meta-analyses, which analyze and combine results from the various epidemiological studies, both suggest a statistically significant increase of 30 to 40 percent in the risk of lung cancer, attributable to occupational dpm exposure. The studies themselves, along with MSHA's comments on each study, are summarized in Tables III–4 (24 cohort studies) and III–5 (19 case-control studies).[11] Presence or absence of an adjustment for smoking habits is highlighted, and adjustments for other potentially confounding factors are indicated when applicable.

Some degree of association between occupational dpm exposure and an excess risk of lung cancer was observed in 38 of the 43 studies reviewed by MSHA: 18 of the 19 case-control studies and 20 of the 24 cohort studies. However, the 38 studies reporting a positive association vary considerably in the strength of evidence they present. As shown in Tables III–4 and III–5, *statistically significant* results were reported in 24 of the 43 studies: 10 of the 18 positive case-control studies and 14 of the 20 positive cohort studies.[12] In six of the 20 cohort studies and nine of the 18 case-control studies showing a positive association, the association observed was not statistically significant.

Because workers tend to be healthier than non-workers, the incidence of disease found among workers exposed to a toxic substance may be lower than the rate prevailing in the general population, but higher than the rate occurring in an unexposed population of workers. This phenomenon, called the ''healthy worker effect,'' also applies when the rate observed among exposed workers is greater than that found in the general population. In this case, assuming a study is unbiased with respect to other factors such as smoking, comparison with the general population will tend to *underestimate* the excess risk of disease attributable to the substance being investigated. Several studies drew comparisons against the general population, including both workers and nonworkers, with no compensating adjustment for the healthy worker effect. Therefore, in these studies, the excess risk of lung cancer attributable to dpm exposure is likely to have been underestimated, thereby making it more difficult to obtain a statistically significant result.

Five of the 43 studies listed in Tables III–4 and III–5 are negative—i.e., a lower rate of lung cancer was found among exposed workers than in the control population used for comparison. None of these five results, however, were statistically significant. Four of the five were cohort studies that drew comparisons against the general population and did not take the healthy worker effect into account. The remaining negative study was a case-control study in which vehicle drivers and locomotive engineers were compared to clerical workers.

Two cohort studies (Waxweiler et al., 1973; Ahlman et al., 1991) were performed specifically on groups of miners, and one (Boffetta et al., 1988) addressed miners as a subgroup of a larger population. Although an elevated prevalence of lung cancer was found among miners in both the 1973 and 1991 studies, the results were not statistically significant. The 1988 study found, after adjusting for smoking patterns and other occupational exposures, an 18-percent increase in the lung cancer rate among all workers occupationally exposed to diesel exhaust and a 167-percent increase

[11] For simplicity, the epidemiological studies considered here are placed into two broad categories. A *cohort study* compares the health of persons having different exposures, diets, etc. A *case-control study* starts with two defined groups that differ in terms of their health and compares their exposure characteristics.

[12] A statistically significant result is a result unlikely to have arisen by chance in the group, or statistical *sample*, of persons being studied. An association arising by chance would have no predictive value for workers outside the sample. Failure to achieve statistical significance in an individual study can arise because of inherent limitations in the study, such as a small number of subjects in the sample or a short period of observation. Therefore, the lack of statistical significance in an individual study does not demonstrate that the results of that study were due merely to chance—only that the study (viewed in isolation) is inconclusive.

among miners (relative risk = 2.67). The latter result is statistically significant.

In addition, four case-control studies, all of which adjusted for smoking, found elevated rates of lung cancer associated with mining. The results for miners in three of these studies (Benhamou et al., 1988; Morabia et al., 1992; Siemiatycki et al., 1988) are given little weight because of potential confounding by occupational exposures to other carcinogens. The other study (Lerchen et al., 1987) showed a marginally significant result for underground non-uranium miners, but this was based on very few cases and the extent of diesel exposure among these miners was not reported. Although they do not pertain specifically to mining environments, other studies showing statistically significant results (most notably those by Garshick et al., 1987 and 1988) are based on far more data, contain better diesel exposure information, and are less susceptible to confounding by extraneous risk factors.

Since none of the existing human studies is perfect and many contain major deficiencies, it is not surprising that reported results differ in magnitude and statistical significance. Shortcomings identified in both positive and negative studies include: possible misclassification with respect to exposure; incomplete or questionable characterization of the exposed population; unknown or uncertain quantification of diesel exhaust exposure; incomplete, uncertain, or unavailable history of exposure to tobacco smoke and other carcinogens; and insufficient sample size, dpm exposure, or latency period (i.e., time since exposure) to detect a carcinogenic effect if one exists. Indeed, in their review of these studies, Stöber and Abel (1996) conclude that ''In this field * * * epidemiology faces its limits (Taubes, 1995) * * * Many of these studies were doomed to failure from the very beginning.''

Such problems, however, are not unique to epidemiological studies involving diesel exhaust but are common sources of uncertainty in virtually all epidemiological research involving cancer. Indeed, deficiencies such as exposure misclassification, small sample size, and short latency make it difficult to detect a relationship even when one exists. Therefore, the fact that 38 out of 43 studies showed any excess risk of lung cancer associated with dpm exposure may itself be a significant result, even if the evidence in most of those 38 studies is relatively weak.[13] The sheer number of studies showing such an association readily distinguishes this body of evidence from those criticized by Taubes (1995), where weak evidence is available from only a single study.

At the same time, MSHA recognizes that simply tabulating outcomes can sometimes be misleading, since there are generally a variety of outcomes that could render a study positive or negative and some studies use related data sets. Therefore, rather than limiting its assessment to such a tabulation, MSHA is basing its evaluation with respect to lung cancer largely on the two comprehensive meta-analyses (Lipsett and Alexeeff, 1998; Bhatia et al., 1998) described later, in the ''material impairments'' section of this risk assessment. In addition to restricting themselves to independent studies meeting certain minimal requirements, both meta-analyses investigated and rejected publication bias as an explanation for the generally positive results reported.

All of the studies showing negative or statistically insignificant positive associations were either based on relatively short observation or follow-up periods, lacked good information about dpm exposure, involved low duration or intensity of dpm exposure, or, because of inadequate sample size, lacked the statistical power to detect effects of the magnitude found in the ''positive'' studies. As stated by Boffetta et al. (1988, p. 404), studies failing to show a statistically significant association—

> * * * often had low power to detect any association, had insufficient latency periods, or compared incidence or mortality rates among workers to national rates only, resulting in possible biases caused by the ''healthy worker effect.''

Some respondents to the ANPRM argued that such methodological weaknesses may explain why not all of the studies showed a statistically significant association between dpm exposure and an increased prevalence of lung cancer. According to these commenters, if an epidemiological study shows a statistically significant result, this often occurs *in spite of* methodological weaknesses rather than because of them. Limitations such as potential exposure misclassification, inadequate latency, inadequate sample size, and insufficient duration of exposure all make it more difficult to obtain a statistically significant result when a real relationship exists.

On the other hand, Stöber and Abel (1996) argue, along with Morgan et al. (1997) and some commenters, that even in those epidemiological studies showing a statistically significant association, the magnitude of relative or excess risk observed is too small to demonstrate any causal link between dpm exposure and cancer. Their reasoning is that in these studies, errors in the collection or interpretation of smoking data can create a bias in the results larger than any potential contribution attributable to diesel particulate. They propose that studies failing to account for smoking habits should be disqualified from consideration, and that evidence of an association from the remaining studies should be discounted because of potential confounding due to erroneous, incomplete, or otherwise inadequate characterization of smoking histories.

MSHA concurs with Cohen and Higgins (1995), Lipsett and Alexeeff (1998), and Bhatia et al. (1998) in not accepting this view. MSHA does recognize that unknown exposures to tobacco smoke or other human carcinogens, such as asbestos, can distort the results of some lung cancer studies. MSHA also agrees that significant differences in the distribution of confounding factors, such as smoking history, between study and control groups can lead to misleading results. MSHA also recognizes, however, that it is not possible to design a human epidemiological study that perfectly controls for all potentially confounding factors. Some degree of informed subjective judgement is always required in evaluating the potential significance of unknown or uncontrolled factors.

Sixteen of the published epidemiological studies involving lung cancer did, in fact, control or adjust for exposure to tobacco smoke, and some of these also controlled or adjusted for exposure to asbestos and other carcinogenic substances (e.g., Garshick *et al.*, 1987; Steenland *et al.*, 1990; Boffetta *et al.*, 1988). All but one of these 16 epidemiological studies reported some degree of excess risk associated with exposure to diesel particulate, with statistically significant results reported in seven. These results are less likely to be confounded than results from studies with no adjustment. In addition, several of the other studies drew comparisons against internal control groups or control groups likely

[13] The high proportion of positive studies is statistically significant according to the 2-tailed sign test, which rejects, at a high confidence level, the null hypothesis that each study is equally likely to be positive or negative. Assuming that the studies are independent, and that there is no systematic bias in one direction or the other, the probability of 38 or more out of 43 studies being either positive or negative is less than one per million under the null hypothesis.

to have similar smoking habits as the exposed groups (e.g., Garshick *et al.*, 1988; Gustavsson *et al.*, 1990; and Hansen, 1993). MSHA places more weight on these studies than on studies drawing comparisons against dissimilar groups with no controls or adjustments.

According to Stöber and Abel, the potential confounding effects of smoking are so strong that they could explain even statistically significant results observed in studies where smoking was explicitly taken into account. MSHA agrees that variable exposures to non-diesel lung carcinogens, including relatively small errors in smoking classification, could bias individual studies. However, the potential confounding effect of tobacco smoke and other carcinogens can cut in either direction. Spurious positive associations of dpm exposure with lung cancer would arise only if the group exposed to dpm had a greater exposure to these confounders than the unexposed control group used for comparison. If, on the contrary, the control group happened to be more exposed to confounders, then this would tend to make the association between dpm exposure and lung cancer appear negative. Therefore, although smoking effects could potentially distort the results of any single study, this effect could reasonably be expected to make only about half the studies that were explicitly adjusted for smoking come out positive. Smoking is unlikely to have been responsible for finding an excess prevalence of lung cancer in 15 out of 16 studies in which a smoking adjustment was applied. Based on a 2-tailed sign test, this possibility can be rejected at a confidence level greater than 99.9 percent.

Even in the 27 studies involving lung cancer for which no smoking adjustment was made, tobacco smoke and other carcinogens are important confounders only to the extent that the populations exposed and unexposed to diesel exhaust differed systematically with respect to these other exposures. Twenty-three of these studies, however, reported some degree of excess lung cancer risk associated with diesel exposure. This result could be attributed to non-diesel exposures only in the unlikely event that, in nearly all of these studies, diesel-exposed workers happened to be more highly exposed to these other carcinogens than the control groups of workers unexposed to diesel. All five studies not showing any association (Kaplan, 1959; DeCoufle, 1977; Waller, 1981; Edling, 1987; and Bender, 1989) may have failed to detect such a relationship because of too small a study group, lack of accurate exposure information, low duration or intensity of exposure, and/or insufficient latency or follow-up time.

It is also significant that the two most comprehensive, complete, and well-controlled studies available (Garshick *et al.*, 1987 and 1988) both point in the direction of an association between dpm exposure and an excess risk of lung cancer. These studies took care to address potential confounding by tobacco smoke and asbestos exposures. In response to the ANPRM, a consultant to the National Coal Association who was critical of all other available studies acknowledged that these two:

> * * * have successfully controlled for severally [sic] potentially important confounding factors * * * Smoking represents so strong a potential confounding variable that its control must be nearly perfect if an observed association between cancer and diesel exhaust is * * * [inferred to be causal]. In this regard, two observations are relevant. First, both case-control [Garshick *et al.*, 1987] and cohort [Garshick *et al.*, 1988] study designs revealed consistent results. Second, an examination of smoking related causes of death other than lung cancer seemed to account for only a fraction of the association observed between diesel exposure and lung cancer. A high degree of success was apparently achieved in controlling for smoking as a potentially confounding variable. [Submission 87–0–10, Robert A. Michaels, RAM TRAC Corporation, prepared for National Coal Association].

Potential biases due to extraneous risk factors are unlikely to account for a significant part of the excess risk in all studies showing an association. Excess rates of lung cancer were associated with dpm exposure in all epidemiologic studies of sufficient size and scope to detect such an excess. Although it is possible, in any individual study, that the potentially confounding effects of differential exposure to tobacco smoke or other carcinogens could account for the observed elevation in risk otherwise attributable to diesel exposure, it is unlikely that such effects would give rise to positive associations in 38 out of 43 studies. As stated by Cohen and Higgins (1995):

> * * * elevations [of lung cancer] do not appear to be fully explicable by confounding due to cigarette smoking or other sources of bias. Therefore, at present, exposure to diesel exhaust provides the most reasonable explanation for these elevations. The association is most apparent in studies of occupational cohorts, in which assessment of exposure is better and more detailed analyses have been performed. The largest relative risks are often seen in the categories of most probable, most intense, or longest duration of exposure. In general population studies, in which exposure prevalence is low and misclassification of exposure poses a particularly serious potential bias in the direction of observing no effect of exposure, most studies indicate increased risk, albeit with considerable imprecision. [Cohen and Higgins (1995), p. 269].

MSHA solicits comment on the issue of the potential for biases in these studies.

III.2.c.i.B.ii. Bladder Cancer

With respect to cancers other than lung cancer, MSHA's review of the literature identified only bladder cancer as a possible candidate for a causal link to dpm. Cohen and Higgins (1995) identified and reviewed 14 epidemiological case-control studies containing information related to dpm exposure and bladder cancer. All but one of these studies found elevated risks of bladder cancer among workers in jobs frequently associated with dpm exposure. Findings were statistically significant in at least four of the studies (statistical significance was not evaluated in three).

These studies point quite consistently toward an excess risk of bladder cancer among truck or bus drivers, railroad workers, and vehicle mechanics. However, the four available cohort studies do not support a conclusion that exposure to dpm is responsible for the excess risk of bladder cancer associated with these occupations. Furthermore, most of the case-control studies did not distinguish between exposure to diesel-powered equipment and exposure to gasoline-powered equipment for workers having the same occupation. When such a distinction was drawn, there was no evidence that the prevalence of bladder cancer was higher for workers exposed to the diesel-powered equipment.

This, along with the lack of corroboration from existing cohort studies, suggests that the excessive rates of bladder cancer observed may be a consequence of factors other than dpm exposure that are also associated with these occupations. For example, truck and bus drivers are subjected to vibrations while driving and may tend to have different dietary and sleeping habits than the general population. For these reasons, MSHA does not find that convincing evidence currently exists for a causal relationship between dpm exposure and bladder cancer.

III.2.c.ii. Studies Based on Exposures to Fine Particulate in Ambient Air

Longitudinal studies examine responses at given locations to changes in conditions over time, whereas *cross-sectional studies* compare results from locations with different conditions at a given point in time. Prior to 1990, cross sectional studies were generally used to

evaluate the relationship between mortality and long-term exposure to particulate matter, but unaddressed spatial confounders and other methodological problems inherent in such studies limited their usefulness (EPA, 1996).

Two recent prospective cohort studies provide better evidence of a link between excess mortality rates and exposure to fine particulate, although the uncertainties here are greater than with the short-term exposure studies conducted in single communities. The two studies are known as the Six Cities study (Dockery *et al.,* 1993), and the American Cancer Society (ACS) study (Pope *et al.,* 1995).[14] The first study followed about 8,000 adults in six U.S. cities over 14 years; the second looked at survival data for half a million adults in 151 U.S. cities for 7 years. After adjusting for potential confounders, including smoking habits, the studies considered differences in mortality rates between the most polluted and least polluted cities.

Both the Six Cities Study and the ACS study found a significant association between increased concentration of $PM_{2.5}$ and total mortality.[15] The authors of the Six Cities Study concluded that the results suggest that exposures to fine particulate air pollution ''contributes to excess mortality in certain U.S. cities.'' The ACS study, which not only controlled for smoking habits and various occupational exposures, but also, to some extent, for passive exposure to tobacco smoke, found results qualitatively consistent with those of the Six Cities Study.[16] In the ACS study, however, the estimated increase in mortality associated with a given increase in fine particulate exposure was lower, though still statistically significant. In both studies, the largest increase observed was for cardiopulmonary mortality. Both studies also showed an increased risk of lung cancer associated with increased exposure to fine particulate, but these results were not statistically significant.

The few studies on associations between chronic $PM_{2.5}$ exposure and morbidity in adults show effects that are difficult to separate from measures of PM_{10} and measures of acid aerosols. The available studies, however, do show positive associations between particulate air pollution and adverse health effects for those with pre-existing respiratory or cardiovascular disease; and as mentioned earlier, there is a large body of evidence showing that respiratory diseases classified as COPD are significantly more prevalent among miners than in the general population. It also appears that PM exposure may exacerbate existing respiratory infections and asthma, increasing the risk of severe outcomes in individuals who have such conditions (EPA, 1996).

III.2.d. Mechanisms of Toxicity

As described in Part II, the particulate fraction of diesel exhaust is made up of aggregated soot particles. Each soot particle consists of an insoluble, elemental carbon core and an adsorbed, surface coating of relatively soluble organic compounds, such as polycyclic aromatic hydrocarbons (PAH's). When released into an atmosphere, the soot particles formed during combustion tend to aggregate into larger particles.

The literature on deposition of fine particles in the respiratory tract is reviewed in Green and Watson (1995) and U.S. EPA (1996). The mechanisms responsible for the broad range of potential particle-related health effects will vary depending on the site of deposition. Once deposited, the particles may be cleared from the lung, translocated into the interstitium, sequestered in the lymph nodes, metabolized, or be otherwise transformed by various mechanisms.

As suggested by Figure II–1 of this preamble, most of the aggregated particles making up dpm never get any larger than one micrometer in diameter. Particles this small are able to penetrate into the deepest regions of the lungs, called *alveoli.* In the alveoli, the particles can mix with and be dispersed by a substance called *surfactant,* which is secreted by cells lining the alveolar surfaces.

MSHA would welcome any additional information, not already covered cited above, on fine particle deposition in the respiratory tract, especially as it might pertain to lung loading in miners exposed to a combination of diesel particulate and other dusts. Any such additional information will be placed into the public record and considered by MSHA before a final rule is adopted.

III.2.d.i. Effects Other than Cancer

A number of controlled animal studies have been undertaken to ascertain the toxic effects of exposure to diesel exhaust and its components. Watson and Green (1995) reviewed approximately 50 reports describing noncancerous effects in animals resulting from the inhalation of diesel exhaust. While most of the studies were conducted with rats or hamsters, some information was also available from studies conducted using cats, guinea pigs, and monkeys. The authors also correlated reported effects with different descriptors of dose. From their review of these studies, Watson and Green concluded that:

(a) Animals exposed to diesel exhaust exhibit a number of noncancerous pulmonary effects, including chronic inflammation, epithelial cell hyperplasia, metaplasia, alterations in connective tissue, pulmonary fibrosis, and compromised pulmonary function.

(b) Cumulative weekly exposure to diesel exhaust of 70 to 80 mg•hr/m^3 or greater are associated with the presence of chronic inflammation, epithelial cell proliferation, and depressed alveolar clearance in chronically exposed rats.

(c) The extrapolation of responses in animals to noncancer endpoints in humans is uncertain. Rats were the most sensitive animal species studied.

Subsequent to the review by Watson and Green, there have been a number of animal studies on allergic immune responses to dpm. Takano et al. (1997) investigated the effects of dpm injected into mice through an intratracheal tube and found manifestations of allergic asthma, including enhanced antigen-induced airway inflammation, increased local expression of cytokine proteins, and increased production of antigen-specific immunoglobulins. The authors concluded that the study demonstrated dpm's enhancing effects on allergic asthma and that the results suggest that dpm is ''implicated in the increasing prevalence of allergic asthma in recent years.'' Similarly, Ichinose et al. (1997) found that five different strains of mice injected intratracheally with dpm exhibited manifestations of allergic asthma, as expressed by enhanced airway inflammation, which were correlated with an increased production of antigen-specific immunoglobulin due to the dpm. The authors concluded that dpm enhances manifestations of allergic airway inflammation and that ''* * * the cause of individual differences in humans at the onset of allergic asthma may be related to differences in antigen-induced immune responses * * *.''

Several laboratory animal studies have been performed to ascertain

[14] A third such study only looked at TSP, rather than fine particulate. It did not find a significant association between total mortality and TSP. It is known as the California Seventh Day Adventist study (Abbey et al., 1991).

[15] The Six Cities study also found such relationships at elevated levels of $PM_{15/10}$ and sulfates. The ACS study was designed to follow up on the fine particle result of the Six Cities Study, but also looked at sulfates.

[16] The Six Cities study did not find a statistically significant increase in risk among non-smokers, suggesting that this group might not be as sensitive to adverse health effects from exposure to fine particulate; however, the ACS study, with more statistical power, did find an association even for non-smokers.

whether the effects of diesel exhaust are attributable specifically to the particulate fraction. (Heinrich *et al.*, 1986; Iwai *et al.*, 1986; Brightwell et al., 1986). These studies compare the effects of chronic exposure to whole diesel exhaust with the effects of filtered exhaust containing no particles.

The studies demonstrate that when the exhaust is sufficiently diluted to nullify the effects of gaseous irritants (NO_2 and SO_2), irritant vapors (aldehydes), CO, and other systemic toxicants, diesel particles are the prime etiologic agents of noncancer health effects. Exposure to dpm produced changes in the lung that were much more prominent than those evoked by the gaseous fraction alone. Marked differences in the effects of whole and filtered diesel exhaust were also evident from general toxicological indices, such as body weight, lung weight, and pulmonary histopathology. This provides strong evidence that the toxic component in diesel emissions producing the effects noted in other animal studies is due to the particulate fraction.

The mechanisms that may lead to adverse health effects in humans from inhaling fine particulates are not fully understood, but potential mechanisms that have been hypothesized for non-cancerous outcomes are summarized in Table III–6. A comprehensive review of the toxicity literature is provided in U.S. EPA (1996).

Deposition of particulates in the human respiratory tract could initiate events leading to increased airflow obstruction, impaired clearance, impaired host defenses, or increased epithelial permeability. Airflow obstruction could result from laryngeal constriction or bronchoconstriction secondary to stimulation of receptors in extrathoracic or intrathoracic airways. In addition to reflex airway narrowing, reflex or local stimulation of mucus secretion could lead to mucus hypersecretion and could eventually lead to mucus plugging in small airways.

Pulmonary changes that contribute to cardiovascular responses include a variety of mechanisms that can lead to hypoxemia, including bronchoconstriction, apnea, impaired diffusion, and production of inflammatory mediators. Hypoxia can lead to cardiac arrhythmias and other cardiac electrophysiologic responses that, in turn, may lead to ventricular fibrillation and ultimately cardiac arrest. Furthermore, many respiratory receptors have direct cardiovascular effects. For example, stimulation of C-fibers leads to bradycardia and hypertension, and stimulation of laryngeal receptors can result in hypertension, cardiac arrhythmia, bradycardia, apnea, and even cardiac arrest. Nasal receptor or pulmonary J-receptor stimulation can lead to vagally mediated bradycardia and hypertension (Widdicombe, 1988).

In addition to possible acute toxicity of particles in the respiratory tract, chronic exposure to particles that deposit in the lung may induce inflammation. Inflammatory responses can lead to increased permeability and possibly diffusion abnormality. Furthermore, mediators released during an inflammatory response could cause release of factors in the clotting cascade that may lead to an increased risk of thrombus formation in the vascular system (Seaton, 1995). Persistent inflammation, or repeated cycles of acute lung injury and healing, can induce chronic lung injury. Retention of the particles may be associated with the initiation and/or progression of COPD.

III.2.d.ii. Lung Cancer

III.2.d.ii.A. Genotoxicological Evidence

Many studies have shown that diesel soot, or its organic component, can increase the likelihood of genetic mutations during the biological process of cell division and replication. A survey of the applicable scientific literature is provided in Shirnamé-Moré (1995). What makes this body of research relevant to the risk of cancer is that mutations in critical genes can sometimes initiate, promote, or advance a process of carcinogenesis.

The determination of genotoxicity has frequently been made by treating diesel soot with organic solvents such as dichloromethane and dimethyl sulfoxide. The solvent removes the organic compounds from the carbon core. After the solvent evaporates, the mutagenic potential of the extracted organic material is tested by applying it to bacterial, mammalian, or human cells propagated in a laboratory culture. In general, the results of these studies have shown that various components of the organic material can induce mutations and chromosomal aberrations.

A critical issue is whether whole diesel particulate is mutagenic when dispersed by substances present in the lung. Since the laboratory procedure for extracting organic material with solvents bears little resemblance to the physiological environment of the lung, it is important to establish whether dpm as a whole is genotoxic, without solvent extraction. Early research indicated that this was not the case and, therefore, that the active genotoxic materials adhering to the carbon core of diesel particles might not be biologically damaging or even available to cells in the lung (Brooks et al., 1980; King et al., 1981; Siak et al., 1981). A number of more recent research papers, however, have shown that dpm, without solvent extraction, can cause DNA damage when the soot is dispersed in the pulmonary surfactant that coats the surface of the alveoli (Wallace et al., 1987; Keane et al., 1991; Gu et al., 1991; Gu et al., 1992). From these studies, NIOSH has concluded:

> * * * the solvent extract of diesel soot and the surfactant dispersion of diesel soot particles were found to be active in procaryotic cell and eukaryotic cell *in vitro* genotoxicity assays. The cited data indicate that respired diesel soot particles on the surface of the lung alveoli and respiratory bronchioles can be dispersed in the surfactant-rich aqueous phase lining the surfaces, and that genotoxic material associated with such dispersed soot particles is biologically available and genotoxically active. Therefore, this research demonstrates the biological availability of active genotoxic materials without organic solvent interaction. [Cover letter to NIOSH response to ANPRM].

From this conclusion, it follows that dpm itself, and not only its organic extract, can cause genetic mutations when dispersed by a substance present in the lung.

The biological availability of the genotoxic components is also supported directly by studies showing genotoxic effects of exposure to whole dpm. The formation of DNA adducts is an important indicator of genotoxicity and potential carcinogenicity. If DNA adducts are not repaired, then a mutation or chromosomal aberration can occur during normal mitosis (i.e., cell replication). Hemminki et al. (1994) found that DNA adducts were significantly elevated in nonsmoking bus maintenance and truck terminal workers, as compared to a control group of hospital mechanics, with the highest adduct levels found among garage and forklift workers. Similarly, Nielsen et al. (1996) found that DNA adducts were significantly increased in bus garage workers and mechanics exposed to dpm as compared to a control group.

III.2.d.ii.B. Evidence From Animal Studies

Bond et al. (1990) investigated differences in peripheral lung DNA adduct formation among rats, hamsters, mice, and monkeys exposed to dpm at a concentration of 8100 $\lambda g/m^3$ for 12 weeks. Mice and hamsters showed no increase of DNA adducts in their peripheral lung tissue, whereas rats and monkeys showed a 60 to 80% increase. The increased prevalence of lung DNA adducts in monkeys suggests that, with

respect to DNA adduct formation, the human lungs' response to dpm inhalation may more closely resemble that of the rat than that of the hamster or mouse.

Mauderly (1992) and Busby and Newberne (1995) provide reviews of the scientific literature relating to excess lung cancers observed among laboratory animals chronically exposed to filtered and unfiltered diesel exhaust. The experimental data demonstrate that chronic exposure to whole diesel exhaust increases the risk of lung cancer in rats and that dpm is the causative agent. This carcinogenic effect has been confirmed in two strains of rats and in at least five laboratories. Experimental results for animal species other than the rat, however, are either inconclusive or, in the case of Syrian hamsters, suggestive of no carcinogenic effect. This is consistent with the observation, mentioned above, that lung DNA adduct formation is increased among exposed rats but not among exposed hamsters or mice.

The conflicting results for rats and hamsters indicate that the carcinogenic effects of dpm exposure may be species-dependent. Indeed, monkey lungs have been reported to respond quite differently than rat lungs to both diesel exhaust and coal dust (Nikula, 1997). Therefore, the results from rat experiments do not, by themselves, establish that there is any excess risk due to dpm exposure for humans. The human epidemiological data, however, indicate that humans comprise a species that, like rats and unlike hamsters, do suffer a carcinogenic response to dpm exposure. Therefore, MSHA considers the rat studies at least relevant to an evaluation of the risk for humans.

When dpm is inhaled, a number of adverse effects that may contribute to carcinogenesis are discernable by microscopic and biochemical analysis. For a comprehensive review of these effects, see Watson and Green (1995). In brief, these effects begin with phagocytosis, which is essentially an attack on the diesel particles by cells called alveolar macrophages. The macrophages engulf and ingest the diesel particles, subjecting them to detoxifying enzymes. Although this is a normal physiological response to the inhalation of foreign substances, the process can produce various chemical byproducts injurious to normal cells. In attacking the diesel particles, the activated macrophages release chemical agents that attract neutrophils (a type of white blood cell that destroys microorganisms) and additional alveolar macrophages. As the lung burden of diesel particles increases, aggregations of particle-laden macrophages form in alveoli adjacent to terminal bronchioles, the number of Type II cells lining particle-laden alveoli increases, and particles lodge within alveolar and peribronchial tissues and associated lymph nodes. The neutrophils and macrophages release mediators of inflammation and oxygen radicals, which have been implicated in causing various forms of chromosomal damage, genetic mutations, and malignant transformation of cells (Weitzman and Gordon, 1990). Eventually, the particle-laden macrophages are functionally altered, resulting in decreased viability and impaired phagocytosis and clearance of particles. This series of events may result in pulmonary inflammatory, fibrotic, or emphysematous lesions that can ultimately develop into cancerous tumors.

Such reactions have also been observed in rats exposed to high concentrations of fine particles with no organic component (Mauderly et al., 1994; Heinrich et al., 1994 and 1995; Nikula et al., 1995). Rats exposed to titanium dioxide or pure carbon (''carbon-black'') particles, which are not considered to be genotoxic, developed lung cancers at about the same rate as rats exposed to whole diesel exhaust. Therefore, it appears that the toxicity of dpm, at least in some species, may result largely from a biochemical response to the particle itself rather than from specific effects of the adsorbed organic compounds.

Some researchers have interpreted the carbon-black and titanium dioxide studies as also suggesting that (1) the carcinogenic mechanism in rats depends on massive overloading of the lung and (2) that this may provide a mechanism of carcinogenesis specific to rats which does not occur in other rodents or in humans (Oberdörster, 1994; Watson and Valberg, 1996). Some commenters on the ANPRM cited the lack of any link between lung cancer and coal dust or carbon black exposure as evidence that carbon particles, by themselves, are not carcinogenic in humans. Coal mine dust, however, consists almost entirely of particles larger than those forming the carbon core of dpm or used in the carbon-black and titanium dioxide rat studies. Furthermore, although there have been nine studies reporting no excess risk of lung cancer among coal miners (Liddell, 1973; Costello *et al.*, 1974; Armstrong *et al.*, 1979; Rooke *et al.*, 1979; Ames *et al.*, 1983; Atuhaire *et al.*, 1985; Miller and Jacobsen, 1985; Kuempel *et al.*, 1995; Christie *et al.*, 1995), five studies have reported an elevated risk of lung cancer for those exposed to coal dust (Enterline, 1972; Rockette, 1977; Correa *et al.*, 1984; Levin *et al.*, 1988; Morfeld *et al.*, 1997). The positive results in two of these studies (Enterline, 1972; Rockette, 1977) were statistically significant. Furthermore, excess lung cancers have been reported among carbon black production workers (Hodgson and Jones, 1985; Siemiatycki, 1991; Parent *et al.*, 1996). MSHA is not aware of any evidence that a mechanism of carcinogenesis due to fine particle overload is inapplicable to humans. Studies carried out on rodents certainly do not provide such evidence.

The carbon-black and titanium dioxide studies indicate that lung cancers in rats exposed to dpm may be induced by a mechanism that does not require the bioavailability of genotoxic organic compounds adsorbed on the elemental carbon particles. These studies do not, however, prove that the only significant agent of carcinogenesis in rats exposed to diesel particulate is the non-soluble carbon core. Nor do the carbon-black studies prove that the only significant mechanism of carcinogenesis due to diesel particulate is lung overload. Due to the relatively high doses administered in the rat studies, it is conceivable that an overload phenomenon masks or parallels other potential routes to cancer. It may be that effects of the genotoxic organic compounds are merely masked or displaced by overloading in the rat studies. Gallagher et al. (1994) exposed different groups of rats to diesel exhaust, carbon black, or titanium dioxide and detected species of lung DNA adducts in the rats exposed to dpm that were not found in the controls or rats exposed to carbon black or titanium dioxide.

Particle overload may provide the dominant route to lung cancer at very high concentrations of fine particulate, while genotoxic mechanisms may provide the primary route under lower-level exposure conditions. In humans exposed over a working lifetime to doses insufficient to cause overload, carcinogenic mechanisms unrelated to overload may dominate, as indicated by the human epidemiological studies and the data on human DNA adducts cited above. Therefore, the carbon black results observed in the rat studies do not preclude the possibility that the organic component of dpm has important genotoxic effects in humans (Nauss et al., 1995).

Even if the genotoxic organic compounds in dpm were biologically unavailable and played no role in human carcinogenesis, this would not rule out the possibility of a genotoxic

route to lung cancer (even for rats) due to the presence of dpm particles themselves. For example, as a byproduct of the biochemical response to the presence of dpm in the alveoli, free oxidant radicals may be released as macrophages attempt to digest the particles. There is evidence that dpm can both induce production of active oxygen agents and also depress the activity of naturally occurring antioxidant enzymes (Mori, 1996; Sagai, 1993). Oxidants can induce carcinogenesis either by reacting directly with DNA, or by stimulating cell replication, or both (Weitzman and Gordon, 1990). This would provide a mutagenic route to lung cancer with no threshold. Therefore, the carbon black and titanium dioxide studies cited above do not prove that dpm exposure has no incremental, genotoxic effects or that there is a threshold below which dpm exposure poses no risk of causing lung cancer.

It is noteworthy, however, that dpm exposure levels recorded in some mines have been almost as high as laboratory exposures administered to rats showing a clearly positive response. Intermittent, occupational exposure levels greater than about 500 $\mu g/m^3$ dpm may overwhelm the human lung clearance mechanism (Nauss et al., 1 995). Therefore, concentrations at levels currently observed in some mines could be expected to cause overload in some humans, possibly inducing lung cancer by a mechanism similar to what occurs in rats. MSHA would like to receive additional scientific information on this issue, especially as it relates to lung loading in miners exposed to a combination of diesel particulate and other dusts.

As suggested above, such a mechanism would not necessarily be the only route to carcinogenesis in humans and, therefore, would not imply that dpm concentrations too low to cause overload are safe for humans. Furthermore, a proportion of exposed individuals can always be expected to be more susceptible than normal. Therefore, at lower dpm concentrations, particle overload may still provide a route to lung cancer in susceptible humans. At even lower concentrations, other routes to carcinogenesis in humans may predominate, possibly involving genotoxic effects.

III.3. Characterization of Risk.

Having reviewed the evidence of health effects associated with exposure to dpm, MSHA has evaluated that evidence to ascertain whether exposure levels currently existing in mines warrant regulatory action pursuant to the Mine Act. The criteria for this evaluation are established by the Mine Act and related court decisions. Section 101(a)(6)(A) provides that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that need to be addressed: (1) Whether health effects associated with dpm exposure constitute a ''material impairment'' to miner health or functional capacity; (2) whether exposed miners are at significant excess risk of incurring any of these material impairments; and (3) whether the proposed rule will substantially reduce such risks.

The criteria for evaluating the health effects evidence do not require scientific certainty. As noted by Justice Stevens in an important case on risk involving the Occupational Safety and Health Administration, the need to evaluate risk does not mean an agency is placed into a ''mathematical straightjacket.'' [*Industrial Union Department, AFL-CIO* v. *American Petroleum Institute,* 448 U.S. 607, 100 S.Ct. 2844 (1980), hereinafter designated the ''Benzene'' case]. When regulating on the edge of scientific knowledge, certainty may not be possible; and—

> so long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection. [Id. at 656].

The statutory criteria for evaluating the health evidence do not require MSHA to wait for absolute precision. In fact, MSHA is required to use the ''best *available* evidence.'' (Emphasis added).

III.3.a. Material Impairments to Miner Health or Functional Capacity

From its review of the literature cited in Part III.2, MSHA has tentatively concluded that underground miners exposed to current levels of dpm are at excess risk of incurring the following three kinds of material impairment: (i) sensory irritations and respiratory symptoms; (ii) death from cardiovascular, cardiopulmonary, or respiratory causes; and (iii) lung cancer. The basis for linking these with dpm exposure is summarized in the following three subsections.

III.3.a.i. Sensory Irritations and Respiratory Symptoms

Kahn et al. (1988), Battigelli (1965), Gamble et al. (1987a) and Rudell et al. (1996) identified a number of debilitating acute responses to diesel exhaust exposure: irritation of the eyes, nose and throat; headaches, nausea, and vomiting; chest tightness and wheeze. These symptoms were also reported by miners at the 1995 workshops. In addition, Ulfvarson et al. (1987, 1990) found evidence of reduced lung function in workers exposed to dpm for a single shift.

Although there is evidence that such symptoms subside within one to three days of no occupational exposure, a miner who must be exposed to dpm day after day in order to earn a living may not have time to recover from such effects. Hence, the opportunity for a so-called ''reversible'' health effect to reverse itself may not be present for many miners. Furthermore, effects such as stinging, itching and burning of the eyes, tearing, wheezing, and other types of sensory irritation can cause severe discomfort and can, in some cases, be seriously disabling. Also, workers experiencing sufficiently severe sensory irritations can be distracted as a result of their symptoms, thereby endangering other workers and increasing the risk of accidents. For these reasons, MSHA considers such irritations to constitute ''material impairments'' of health or functional capacity within the meaning of the Act, regardless of whether or not they are reversible. Further discussion of why MSHA believes reversible effects can constitute material impairments can be found earlier in this risk assessment, in the section entitled ''Relevance of Health Effects that are Reversible.''

The best available evidence also points to more severe respiratory consequences of exposure to dpm. Significant associations have been detected between acute environmental exposures to fine particulates and debilitating respiratory impairments in adults, as measured by lost work days, hospital admissions, and emergency room visits. Short-term exposures to fine particulates, or particulate air pollution in general, have been associated with significant increases in the risk of hospitalization for both pneumonia and COPD (EPA, 1996).

The risk of severe respiratory effects is exemplified by specific cases of persistent asthma linked to diesel exposure (Wade and Newman, 1993). There is considerable evidence for a causal connection between dpm exposure and increased manifestations of allergic asthma and other allergic

respiratory diseases, coming from recent experiments on animals and human cells (Peterson and Saxon, 1996; Diaz-Sanchez, 1997; Takano et al., 1997; Ichinose et al., 1997). Such health outcomes are clearly ''material impairments'' of health or functional capacity within the meaning of the Act.

III.3.a.ii. Excess Risk of Death from Cardiovascular, Cardiopulmonary, or Respiratory Causes

The evidence from air pollution studies identifies death, largely from cardiovascular or respiratory causes, as an endpoint significantly associated with acute exposures to fine particulates. The weight of epidemiological evidence indicates that short-term ambient exposure to particulate air pollution contributes to an increased risk of daily mortality. Time-series analyses strongly suggest a positive effect on daily mortality across the entire range of ambient particulate pollution levels. Relative risk estimates for daily mortality in relation to daily ambient particulate concentration are consistently positive and statistically significant across a variety of statistical modeling approaches and methods of adjustment for effects of relevant covariates such as season, weather, and co-pollutants. After thoroughly reviewing this body of evidence, the U.S. Environmental Protection Agency (EPA) concluded:

> It is extremely unlikely that study designs not yet employed, covariates not yet identified, or statistical techniques not yet developed could wholly negate the large and consistent body of epidemiological evidence * * *.

There is also substantial evidence of a relationship between chronic exposure to fine particulates and an excess (age-adjusted) risk of mortality, especially from cardiopulmonary diseases. The Six Cities and ACS studies of ambient air particulates both found a significant association between chronic exposure to fine particles and excess mortality. In both studies, after adjusting for smoking habits, a statistically significant excess risk of cardiopulmonary mortality was found in the city with the highest average concentration of fine particulate (i.e., $PM_{2.5}$) as compared to the city with the lowest. Both studies also found excess deaths due to lung cancer in the cities with the higher average level of $PM_{2.5}$, but these results were not statistically significant (EPA, 1996). The EPA concluded that—

> * * * the chronic exposure studies, taken together, suggest there may be increases in mortality in disease categories that are consistent with long-term exposure to airborne particles and that at least some fraction of these deaths reflect cumulative PM impacts above and beyond those exerted by acute exposure events * * * There tends to be an increasing correlation of long-term mortality with PM indicators as they become more reflective of fine particle levels (EPA, 1996).

Whether associated with acute or chronic exposures, the excess risk of death that has been linked to pollution of the air with fine particles like dpm is clearly a ''material impairment'' of health or functional capacity within the meaning of the Act.

III.3.a.iii. Lung Cancer

It is clear that lung cancer constitutes a ''material impairment'' of health or functional capacity within the meaning of the Act. Questions have been raised however, as to whether the evidence linking dpm exposure with an excess risk of lung cancer demonstrates a causal connection (Stöber and Abel, 1996; Watson and Valberg, 1996; Cox, 1997; Morgan et al., 1997; Silverman, 1998).

MSHA recognizes that no single one of the existing epidemiological studies, viewed in isolation, provides conclusive evidence of a causal connection between dpm exposure and an elevated risk of lung cancer in humans. Consistency and coherency of results, however, do provide such evidence. Although no epidemiological study is flawless, studies of both cohort and case-control design have quite consistently shown that chronic exposure to diesel exhaust, in a variety of occupational circumstances, is associated with an increased risk of lung cancer. With only rare exceptions, involving too few workers and/or observation periods too short to have a good chance of detecting excess cancer risk, the human studies have shown a greater risk of lung cancer among exposed workers than among comparable unexposed workers.

Lipsett and Alexeeff (1998) performed a comprehensive statistical meta-analysis of the epidemiological literature on lung cancer and dpm exposure. This analysis systematically combined the results of the studies summarized in Tables III–4 and III–5. Some studies were eliminated because they did not allow for a period of at least 10 years for the development of clinically detectable lung cancer. Others were eliminated because of bias resulting from incomplete ascertainment of lung cancer cases in cohort studies or because they examined the same cohort population as another study. One study was excluded because standard errors could not be calculated from the data presented. The remaining 30 studies were analyzed using both a fixed-effects and a random-effect analysis of variance (ANOVA) model. Sources of heterogeneity in results were investigated by subset analysis; using categorical variables to characterize each study's design; target population (general or industry-specific); occupational group; source of control or reference population; latency; duration of exposure; method of ascertaining occupation; location (North America or Europe); covariate adjustments (age, smoking, and/or asbestos exposure); and absence or presence of a clear healthy worker effect (as manifested by lower than expected all-cause mortality in the occupational population under study).

Sensitivity analyses were conducted to evaluate the sensitivity of results to inclusion criteria and to various assumptions used in the analysis. This included substitution of excluded ''redundant'' studies of same cohort population for the included studies and exclusion of studies involving questionable exposure to dpm. An influence analysis was also conducted to examine the effect of dropping one study at a time, to determine if any individual study had a disproportionate effect on the ANOVA. Potential effects of publication bias were also investigated. The authors concluded:

> The results of this meta-analysis indicate a consistent positive association between occupations involving diesel exhaust exposure and the development of lung cancer. Although substantial heterogeneity existed in the initial pooled analysis, stratification on several factors identified a relationship that persisted throughout various influence and sensitivity analyses* * *.
>
> This meta-analysis provides evidence consistent with the hypothesis that exposure to diesel exhaust is associated with an increased risk of lung cancer. The pooled estimates clearly reflect the existence of a positive relationship between diesel exhaust and lung cancer in a variety of diesel-exposed occupations, which is supported when the most important confounder, cigarette smoking, is measured and controlled. There is suggestive evidence of an exposure-response relationship in the smoking adjusted studies as well. Many of the subset analyses indicated the presence of substantial heterogeneity among the pooled estimates. Much of the heterogeneity observed, however, is due to the presence or absence of adjustment for smoking in the individual study risk estimates, to occupation-specific influences on exposure, to potential selection biases, and other aspects of study design.

A second, independent meta-analysis of epidemiological studies published in peer-reviewed journals was conducted

by Bhatia et al. (1998).[17] In this analysis, studies were excluded if actual work with diesel equipment ''could not be confirmed or reliably inferred'' or if an inadequate latency period was allowed for cancer to develop, as indicated by less than 10 years from time of first exposure to end of follow-up. Studies of miners were also excluded, because of potential exposure to radon and silica. Likewise, studies were excluded if they exhibited selection bias or examined the same cohort population as a study published later. A total of 29 independent studies from 23 published sources were identified as meeting the inclusion criteria. After assigning each of these 29 studies a weight proportional to its estimated precision, pooled relative risks were calculated based on the following groups of studies: all 29 studies; all case-control studies; all cohort studies; cohort studies using internal reference populations; cohort studies making external comparisons; studies adjusted for smoking; studies not adjusted for smoking; and studies grouped by occupation (railroad workers, equipment operators, truck drivers, and bus workers). Elevated risks were shown for exposed workers overall and within every individual group of studies analyzed. A positive duration-response relationship was observed in those studies presenting results according to employment duration. The weighted, pooled estimates of relative risk were identical for case-control and cohort studies and nearly identical for studies with or without smoking adjustments. Based on their stratified analysis, the authors argued that—

> the heterogeneity in observed relative risk estimates may be explained by differences between studies in methods, in populations studied and comparison groups used, in latency intervals, in intensity and duration of exposure, and in the chemical and physical characteristics of diesel exhaust.

They concluded that the elevated risk of lung cancer observed among exposed workers was unlikely to be due to chance, that confounding from smoking is unlikely to explain all of the excess risk, and that ''this meta-analysis supports a causal association between increased risks for lung cancer and exposure to diesel exhaust.''

As discussed earlier in the section entitled ''Mechanisms of Toxicity,'' animal studies have confirmed that diesel exhaust can increase the risk of lung cancer in some species and shown that dpm (rather than the gaseous fraction of diesel exhaust) is the causal agent. MSHA, however, views results from animal studies as subordinate to the results obtained from human studies. Since the human studies show increased risk of lung cancer at dpm levels lower than what might be expected to cause overload, they provide evidence that overload may not be the only mechanism at work among humans. The fact that dpm has been proven to cause lung cancer in laboratory rats is of interest primarily in supporting the plausibility of a causal interpretation for relationships observed in the human studies.

Similarly, the genotoxicological evidence provides additional support for a causal interpretation of associations observed in the epidemiological studies. This evidence shows that dpm dispersed by alveolar surfactant can have mutagenic effects, thereby providing a genotoxic route to carcinogenesis independent of overloading the lung with particles. Chemical byproducts of phagocytosis may provide another genotoxic route. Inhalation of diesel emissions has been shown to cause DNA adduct formation in peripheral lung cells of rats and monkeys, and increased levels of human DNA adducts have been found in association with occupational exposures. Therefore, there is little basis for postulating that a threshold exists, demarcating overload, below which dpm would not be expected to induce lung cancers in humans.

Results from the epidemiological studies, the animal studies, and the genotoxicological studies are coherent and mutually reinforcing. After considering all these results, MSHA has concluded that the epidemiological studies, supported by the experimental data establishing the plausibility of a causal connection, provide strong evidence that chronic occupational dpm exposure increases the risk of lung cancer in humans.

III.3.b. Significance of the Risk of Material Impairment to Miners

The fact that there is substantial evidence that dpm exposure can materially impair miner health in several ways does not imply that miners will necessarily suffer such impairments at a significant rate. This section will consider the significance of the risk faced by miners exposed to dpm.

III.3.b.i. Definition of a Significant Risk

The benzene case, referred to earlier in this section, provides the starting point for MSHA's analysis of this issue. Soon after its enactment in 1970, OSHA adopted a ''consensus'' standard on exposure to benzene, as required and authorized by the OSH Act. The basic part of the standard was an average exposure limit of 10 parts per million over an 8-hour workday. The consensus standard had been established over time to deal with concerns about poisoning from this substance (448 U.S. 607, 617). Several years later, NIOSH recommended that OSHA alter the standard to take into account evidence suggesting that benzene was also a carcinogen. (*Id.* at 619 *et seq.*). Although the ''evidence in the administrative record of adverse effects of benzene exposure at 10 ppm is sketchy at best,'' OSHA was operating under a policy that there was no safe exposure level to a carcinogen. (*Id.*, at 631). Once the evidence was adequate to reach a conclusion that a substance was a carcinogen, the policy required the agency to set the limit at the lowest level feasible for the industry. (*Id.* at 613). Accordingly, the Agency proposed lowering the permissible exposure limit to 1 ppm.

The Supreme Court rejected this approach. Noting that the OSH Act requires ''safe or healthful employment,'' the court stated that—

> * * *'safe' is not the equivalent of 'risk-free'* * *a workplace can hardly be considered 'unsafe' unless it threatens the workers with a significant risk of harm. Therefore, before he can promulgate any permanent health or safety standard, the Secretary is required to make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices. [Id., at 642, italics in original].

The court went on to explain that it is the Agency that determines how to make such a threshold finding:

> First, the requirement that a 'significant' risk be identified is not a mathematical straitjacket. It is the Agency's responsibility to determine, in the first instance, what it considered to be a 'significant' risk. Some risks are plainly acceptable and others are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take appropriate steps to decrease or eliminate it. Although the Agency has no duty to calculate the exact probability of

[17] To address potential publication bias, the authors identified several unpublished studies on truck drivers and noted that elevated risks for exposed workers observed in these studies were similar to those in the published studies utilized. Based on this and a ''funnel plot'' for the included studies, the authors concluded that there was no indication of publication bias.

harm, it does have an obligation to find that a significant risk is present before it can characterize a place of employment as 'unsafe.' [*Id.*, at 655].

The court noted that the Agency's "*** determination that a particular level of risk is 'significant' will be based largely on policy considerations." (Id., note 62).

III.3.b.ii. *Evidence of Significant Risk at Current Exposure Levels.* In evaluating the significance of the risks to miners, a key factor is the very high concentrations of diesel particulate to which a number of those miners are currently exposed—compared to ambient atmospheric levels in even the most polluted urban environments, and to workers in diesel-related occupations for which positive epidemiological results have been observed. Figure III–4 compared the range of median dpm exposures measured for mine workers at various mines to the range of geometric means (i.e., estimated medians) reported for other occupations, as well as to ambient environmental levels. Figure III–5 presents a similar comparison, based on the highest mean dpm level observed at any individual mine, the highest mean level reported for any occupational group other than mining, and the highest monthly mean concentration of dpm estimated for ambient air at any site in the Los Angeles basin.[18] As shown in Figure III–5, underground miners are currently exposed at mean levels up to 10 times higher than the highest mean exposure reported for other occupations, and up to 100 times higher than comparable environmental levels of diesel particulate.

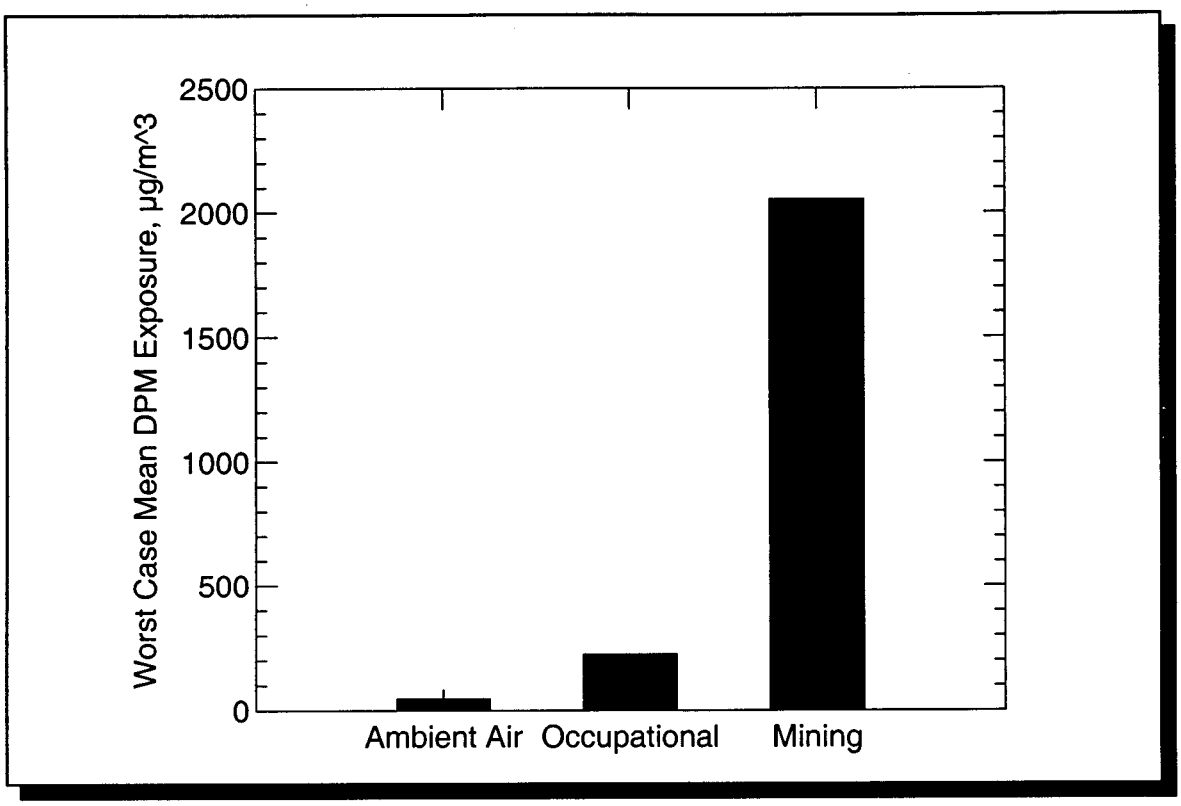

Figure III-5.--Worst case observed or reported mean diesel particulate exposure concentrations for urban ambient air, occupations other than mining, and mining. Worst case for mining is mean dpm measured within an underground mine. Worst case for occupations other than mining is mean respirable particulate matter, other than cigarette smoke, reported for railroad workers classified as hostlers (Woskie et al., 1988). Worst case for ambient air is mean estimated for peak months at most heavily polluted site in Los Angeles area (Cass and Gray, 1995), multiplied by 4.7 to adjust for comparability with occupational lifetime exposure levels. For additional information on means and ranges see section III.1.d.

Given the significantly increased mortality and other acute, adverse health effects associated with increments of 25 µg/m^3 in fine particulate concentration (Table III–3), the relative risk for some miners, especially those already suffering respiratory problems, appears to be extremely high. Acute responses to dpm

[18] For comparability with occupational lifetime exposure levels, the environmental ambient air concentration has been multiplied by a factor of approximately 4.7. This factor reflects a 45-year occupational lifetime with 240 working days per year, as opposed to a 70-year environmental lifetime with 365-days per year, and assumes that air inhaled during a work shift comprises half the total air inhaled during a 24-hour day.

exposures have been detected in studies of stevedores, whose exposure was likely to have been less than one tenth the exposure of some miners on the job.

Both existing meta-analyses of human studies relating dpm exposure and lung cancer suggest that, on average, occupational exposure is responsible for a 30 to 40-percent increase in lung cancer risk across all industries studied (Lipsett and Alexeeff, 1998; Bhatia et al., 1998). Moreover, the epidemiological studies providing the evidence of this increased risk involved average exposure levels estimated to be far below levels to which some underground miners are currently exposed. Specifically, the elevated risk of lung cancer observed in the two most extensively studied industries—trucking (including dock workers) and railroads—was associated with average exposure levels estimated to be far below levels observed in underground mines. The highest average concentration of dpm reported for dock workers—the most highly exposed occupational group within the trucking industry—is about 55 μg/m³ total elemental carbon at an individual dock (NIOSH, 1990). This translates, on average, to no more than about 110 μg/m³ of dpm. Published measurements of dpm for railworkers have generally been less than 140 μg/m³ (measured as respirable particulate matter other than cigarette smoke). The reported mean of 224 μg/m³ for hostlers displayed in Figure III–5 represents only the worst case occupational subgroup (Woskie et al., 1988). Indeed, although MSHA views extrapolations from animal studies as subordinate to results obtained from human studies, it is noteworthy that dpm exposure levels recorded in some underground mines (Figures III–1 and III–2) have been well within the exposure range that produced tumors in rats (Nauss et al., 1995).

The significance of the lung cancer risk to exposed underground miners is also supported by a recent NIOSH report (Stayner et al., 1998), which summarizes a number of published quantitative risk assessments. These assessments are broadly divided into those based on human studies and those based on animal studies. Depending on the particular studies, assumptions, and methods of assessment used, estimates of the exact degree of risk vary widely even within each broad category. MSHA recognizes that a conclusive assessment of the quantitative relationship between lung cancer risk and specific exposure levels is not possible at this time, given the limitations in currently available epidemiological data and questions about the applicability to humans of responses observed in rats. However, all of the very different approaches and methods published so far, as described in Stayner et al. 1998, have produced results indicating that levels of dpm exposure measured at some underground mines present an unacceptably high risk of lung cancer for miners—a risk significantly greater than the risk they would experience without the dpm exposure.

Quantitative risk estimates based on the human studies were generally higher than those based on analyses of the rat inhalation studies. As indicated by Tables 3 and 4 of Stayner et al. 1998, a working lifetime of exposure to dpm at 500 μg/m³ yields estimates of excess lung cancer risk ranging from about 1 to 200 excess cases of lung cancer per thousand workers based on the rat inhalation studies and from about 50 to 800 per 1000 based on the epidemiological assessments. Even the lowest of these estimates indicates a risk that is clearly significant under the quantitative rule of thumb established in the benzene case. [*Industrial Union* v. *American Petroleum*; 448 U.S. 607, 100 S.Ct. 2844 (1980)].

Stayner et al. 1998 concluded their report by stating:

> The risk estimates derived from these different models vary by approximately three orders of magnitude, and there are substantial uncertainties surrounding each of these approaches. Nonetheless, the results from applying these methods are consistent in predicting relatively large risks of lung cancer for miners who have long-term exposures to high concentrations of DEP [i.e., dpm]. This is not surprising given the fact that miners may be exposed to DEP [dpm] concentrations that are similar to those that induced lung cancer in rats and mice, and substantially higher than the exposure concentrations in the positive epidemiologic studies of other worker populations.

The Agency is also aware that a number of other governmental and nongovernmental bodies have concluded that the risks of dpm are of sufficient significance that exposure should be limited:

(1) In 1988, after a thorough review of the literature, the National Institute for Occupational Safety and Health (NIOSH) recommended that whole diesel exhaust be regarded as a potential occupational carcinogen and controlled to the lowest feasible exposure level. The document did not contain a recommended exposure limit.

(2) In 1995, the American Conference of Governmental Industrial Hygienists placed on the Notice of Intended Changes in their Threshold Limit Values (TLV's) for Chemical Substances and Physical Agents and Biological Exposure Indices Handbook a recommended TLV of 150 μg/m³ for exposure to whole diesel particulate.

(3) The Federal Republic of Germany has determined that diesel exhaust has proven to be carcinogenic in animals and classified it as an A2 in their carcinogenic classification scheme. An A2 classification is assigned to those substances shown to be clearly carcinogenic only in animals but under conditions indicative of carcinogenic potential at the workplace. Based on that classification, technical exposure limits for dpm have been established, as described in part II of this preamble. These are the minimum limits thought to be feasible in Germany with current technology and serve as a guide for providing protective measures at the workplace.

(4) The Canada Centre for Mineral and Energy Technology (CANMET) currently has an interim recommendation of 1000 μg/m³ respirable combustible dust. The recommendation was made by an Ad hoc committee made up of mine operators, equipment manufacturers, mining inspectorates and research agencies. As discussed in part II of this preamble, the committee has presently established a goal of 500 μg/m³ as the recommended limit.

(5) Already noted in this preamble is the U.S. Environmental Protection Agency's recently enacted regulation of fine particulate matter, in light of the significantly increased health risks associated with environmental exposure to such particulates. In some of the areas studied, fine particulate is composed primarily of dpm; and significant mortality and morbidity effects were also noted in those areas.

(6) The California Environmental Protection Agency (CALEPA) has identified dpm as a toxic air contaminant, as defined in their Health and Safety Code, Section 39655. According to that section, a toxic air contaminant is an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. This conclusion, unanimously adopted by the California Air Resources Board and its Scientific Review Panel on Toxic Air Contaminants, initiates a process of evaluating strategies for reducing dpm concentrations in California's ambient air.

(7) The International Programme on Chemical Safety (IPCS), which is a joint venture of the World Health Organization, the International Labour Organisation, and the United Nations Environment Programme, has issued a health criteria document on diesel fuel and exhaust emissions (IPCS, 1996). This document states that the data support a conclusion that inhalation of diesel exhaust is of concern with respect to both neoplastic and non-neoplastic diseases. It also states that the particulate phase appears to have the greatest effect on health, and both the particle core and the associated organic materials have biological activity, although the gas-phase components cannot be disregarded.

Based on both the epidemiological and toxicological evidence, the IPCS criteria document concluded that diesel exhaust is ''probably carcinogenic to humans'' and recommended that ''in the occupational environment, good work practices should be encouraged, and adequate ventilation must

be provided to prevent excessive exposure.'' Quantitative relationships between human lung cancer risk and dpm exposure were derived using a dosimetric model that accounted for differences between experimental animals and humans, lung deposition efficiency, lung particle clearance rates, lung surface area, ventilation, and elution rates of organic chemicals from the particle surface.

As the Supreme Court pointed out in the benzene case, the appropriate definition of significance also depends on policy considerations of the Agency involved. In the case of MSHA, those policy considerations include special attention to the history of the Mine Act. That history is intertwined with the toll to the mining community due to silicosis and coal miners' pneumoconiosis (''black lung''), along with billions of dollars in Federal expenditures.

At one of the 1995 workshops on diesel particulate co-sponsored by MSHA, a miner noted:

> People, they get complacent with things like this. They begin to believe, well, the government has got so many regulations on so many things. If this stuff was really hurting us, they wouldn't allow it in our coal mines * * * (dpm Workshop; Beckley, WV, 1995).

Referring to some commenters' position that further scientific study was necessary before a limit on dpm exposure could be justified, another miner said:

> * * * if I understand the Mine Act, it requires MSHA to set the rules based on the best set of available evidence, not possible evidence * * * Is it going to take us 10 more years before we kill out, or are we going to do something now * * *? (dpm Workshop; Beckley, WV, 1995).

Concern with the risk of waiting for additional scientific evidence to support regulation of dpm was also expressed by another miner who testified:

> What are the consequences that the threshold limit values are too high and it's loss of human lives, sickness, whatever, compared to what are the consequences that the values are too low? I mean, you don't lose nothing if they're too low, maybe a little money. But *** I got the indication that the diesel studies in rats could no way be compared to humans because their lungs are not the same * * * But * * * if we don't set the limits, if you remember probably last year when these reports come out how the government used human guinea pigs for radiation, shots, and all this, and aren't we doing the same thing by using coal miners as guinea pigs to set the value? (dpm Workshop; Beckley, WV, 1995).

III.3.c. Substantial Reduction of Risk by Proposed Rule

A review of the best available evidence indicates that reducing the very high exposures currently existing in underground mines can substantially reduce health risks to miners—and that greater reductions in exposure would result in even lower levels of risk. Although there are substantial uncertainties involved in converting 24-hour environmental exposures to 8-hour occupational exposures, Table III–3 suggests that reducing occupational dpm concentrations by as little as 75 $\mu g/m^3$ (corresponding to a reduction of 25 $\mu g/m^3$ in 24-hour ambient atmospheric concentration) could lead to significant reductions in the risk of various adverse acute responses, ranging from respiratory irritations to mortality.

Schwartz et al. (1996) found an increase of 1.5 percent in daily mortality associated with each increment of 10 $\mu g/m^3$ in the concentration of fine particulates. Somewhat higher increases were reported specifically for ischemic heart disease (IHD: 2.1 percent) and chronic obstructive pulmonary disease (COPD: 3.3 percent). Within the range of dust concentrations studied, the response appeared to be linear, with no threshold. Nor did Schwartz et al. find an association between increased mortality and the atmospheric concentration of larger particles.

If the 24-hour average concentrations measured by Schwartz et al. are assumed equivalent, in their acute effects, to eight-hour average concentrations that are three times as high, then (assuming the mining and general populations respond in similar ways) each increment of 30 $\mu g/m^3$ would, in an 8-hour shift occupational setting, be associated with a 1.5-percent increase in daily mortality. Since COPD and IHD were the diseases most clearly identified with acute diesel exposures, a conservative approach would be to limit consideration of any reduction in daily mortality risk under the proposed rule to deaths from IHD and COPD. IHD and COPD accounted for about one-third of the overall mortality. Thus, for purposes of estimating potential benefits, each reduction of 30 $\mu g/m^3$ in 8-hour average dpm concentration may be assumed to correspond to a 0.5-percent reduction (i.e., one-third of 1.5 percent) in daily mortality. This estimate is somewhat conservative, insofar as the reported effects on IHD and COPD mortality were both greater than the effects on overall mortality.

There are, however, additional problems in applying this incremental risk factor to underground M/NM miners. First, the levels of fine particulate concentration studied averaged around 20 $\mu g/m^3$, which is only about 10 percent of the final dpm concentration limit proposed and an even smaller fraction of average dpm concentrations measured at some underground M/NM mines. It is unclear whether the same incremental effects on mortality risks would apply at these much higher exposure levels. Second, Schwartz et al. studied fine particulate concentrations, which, though generally related to combustion products, include but are not limited to dpm. It is unclear how closely these results would match the effects of fine particulate dust made up exclusively of dpm. Third, and also discussed elsewhere in MSHA's risk assessment, is the question of whether underground M/NM mine workers comprise a population less, equally, or more susceptible than the general population to acute mortality effects of fine particulates. It is unclear how similar an exposure-response relationship for miners would be to the relationship observed for the general population. For these reasons, benefits of the proposed rule, as it impacts deaths related to IHD and/or COPD among M/NM miners, cannot be quantified with a high degree of confidence. Subject to these caveats, however, applying the findings of Schwartz et al. (adjusted as discussed above) would suggest that, for miners currently exposed to dpm at an average concentration of 830 $\mu g/m^3$ (i.e., the average of measurements made by MSHA at underground M/NM mines), the proposed rule would reduce the acute risk of IHD/COPD mortality by about 10 percent $[(830 - 200)\ \mu g/m^3 \times (0.5\% \div 30\ \mu g/m^3)]$.

Quantitative assessments of the relationship between human dpm exposures and lung cancer, which would show just how many cases of lung cancer a given reduction in exposure could be expected to prevent, have produced varying results and are subject to considerable uncertainty (Stayner *et al.*, 1998; US–EPA, 1998). None of the human-based dose-response relationships has been widely accepted in the scientific community, most likely due to a lack of precisely quantified dpm exposures in the available epidemiological studies. Although future studies may provide a better foundation for quantitative risk assessment, the Agency believes it would not be prudent to postpone protection of miners exposed to extremely high dpm levels until a conclusive dose-response relationship becomes available. In the meantime, the published, human-based quantitative risk assessments reviewed by Stayner et al. (1998) provide the best available means of estimating the reduction in lung cancer risk to underground M/NM miners that may be expected from reducing dpm exposures.

Among the human-based assessments reviewed, even the lowest estimate of

unit risk of developing lung cancer is 10^{-4} per each μg/m³ of dpm exposure over a 45-year occupational lifetime at 8 hours of exposure per workday. It should be noted that this risk estimate was derived from exposures estimated to be generally below the proposed final limit. As Stayner et al. point out, there are some questions raised by extrapolating estimated risks to exposure levels up to 10 times as high, but doing so is unavoidable in order to estimate benefits based on existing data. On the other hand, the issue of whether a threshold exists is of little or no concern when assessing risk at these higher exposure levels. MSHA specifically requests information regarding any studies on miner mortality at high dpm exposures and the accuracy of the assumption of linearity.

Assuming this dose-response relationship, it is possible to estimate the reduction in lung cancers that could be expected as a result of implementing the proposed rule. To form such an estimate, however, measures of both current and proposed levels of dpm exposure are also required.

Table III–7 presents three estimates of current dpm exposure levels:

TABLE III–7.—MEASURES OF DPM EXPOSURE IN PRODUCTION AREAS AND HAULAGEWAYS OF UNDERGROUND M/NM MINES

	Employment size of mine			
	<20	20 to 500	>500	All Affected Mines
Number of Affected Mines	82	114	7	203
Number of Affected Miners	460	3,770	3,270	7,500
Dpm Concentration Estimated from Diesel Equipment Inventory				
Based on Test Data (μg/m³)	2,766	1,880	1,232	1,863
Adjusted for Observed Duty Cycle (μg/m³)	1,951	1,331	877	1,319
Mean dpm Concentration Level Observed in Underground M/NM Mines (μg/m³)				830

In its inventory of underground M/NM mines, MSHA collected data on diesel powered equipment, ventilation throughput, and the volume of the work areas. MSHA then estimated dpm concentration levels in the mines by combining these data with emissions data for the diesel engines obtained during testing in accordance with MSHA's engine approval process. The estimate of mean dpm concentration obtained by this method is 1,863 μg/m³.

MSHA then compared the duty cycles for the diesel powered equipment used in the tests to the duty cycles observed in the mines. Recalibrating the results for the observed duty cycles lowered the estimated dpm concentrations by approximately 30 percent. The adjusted estimate of mean dpm concentration is 1,319 μg/m³.

The third estimate of current mean dpm concentration shown in Table III–7 is the mean dpm concentration measured during MSHA's field studies, as shown in Table III–1 of this preamble. MSHA's dpm measurements averaged 830 μg/m³ at underground M/NM mines.

Applying the 10^{-4} estimate of unit risk to these three dpm concentration levels produces estimates of excess risk, for a 45-year period of exposure, of 186 cancers per 1,000 miners, 132 cancers per 1,000 miners, and 83 cancers per 1,000 miners, respectively. These estimates assume that the 45-year period of occupational exposure begins at age 20 and that the excess risk of dying from lung cancer is accumulated from age 20 through age 85-a span of 65 years.

Approximately 9,400 miners work in underground areas of M/NM mines that use diesel powered equipment, and MSHA estimates that about 80 percent (i.e., 7,500) of these work in production or development areas including haulageways. Therefore, if the 7,500 affected miners were all exposed for a full 45 years, this dose-response relationship would yield, over the 65-year period from time of first occupational exposure, 1,395 excess cancers, 990 excess cancers, or 622 excess cancers, corresponding to the three estimates of current mean exposure. For purposes of projecting benefits of the proposed rule, MSHA is restricting its attention to the lowest of these estimates, since it is based on actual measurements of dpm concentration.

Although many individual miners may work in underground M/NM mines for a full 45 years (and the Mine Act requires MSHA to set standards that protect workers exposed for a full working lifetime), MSHA believes that it may also be appropriate to estimate benefits of the proposed rule based on the mean duration of exposure. If the mean exposure time is actually 20 years, then the estimated excess risk of lung cancer could be reduced by roughly a factor of 20/45, from 83 per thousand miners to about 37 per thousand miners. However, since the total number of miners exposed during a given 45-year period will now be increased by a factor of 45/20, the total number of excess lung cancers expected at current exposure levels remains the same: 622, or an average of 9.6 per year, spread over an initial 65-year period.

After final implementation of the proposed rule, dpm concentrations in underground M/NM mines would be limited to a maximum of approximately 200 μg/m³ on each and every shift. Therefore, since concentrations would be expected to generally fall below their maximum value, it would be reasonable to assume that the average concentration would fall below 200 μg/m³. (MSHA's sampling found concentrations under controlled conditions as low as 55 μg/m³). So as not to overstate benefits, MSHA has projected residual risk under the proposed rule assuming the concentration limit of 200 μg/m³ is exactly met on all shifts at all mines.

From Table IV of Stayner et al. (1998), the lowest human-based risk estimate among workers occupationally exposed to 200 ≥g/m³ for 45 years is 21 excess lung cancers per 1000 exposed miners. For the population of 7,500 underground M/NM mine workers, this would amount to 158 excess lung cancers over an initial 65-year period, or an average of 2.4 excess lung cancers per year. If, as before, a 20-year average is assumed for occupational exposure, this reduces an individual miner's risk to a hypothetical 9.3 excess lung cancers per thousand exposed miners under the proposed rule, but the total number of

excess lung cancers expected over the initial 65-year period remains the same. Thus, under the assumptions stated, the benefit of the proposed rule in reducing incidents of lung cancer can be expressed as:

- 622 − 158 = 464 lung cancers avoided over an initial 65-year period; [19] or
- 464 ÷ 65 = approximately 7 lung cancers avoided per year over an initial 65-year period; or
- 83 − 21 = 62 lung cancers avoided per 1,000 miners occupationally exposed for 45 years; or
- 37 − 9.3 = 28 lung cancers avoided per 1,000 miners occupationally exposed for 20 years.

The Agency recognizes that a conclusive, quantitative dose-response relationship has not been established between dpm and lung cancer in humans. However, the epidemiological studies relating dpm exposure to excess lung cancer were conducted on populations whose average exposure is estimated to be less than 200 μg/m^3 and less than one tenth of average exposures observed in some underground mines. Therefore, the best available evidence indicates that lifetime occupational exposure at levels currently existing in some underground mines presents a significant excess risk of lung cancer.

In the case of underground M/NM mines, the proposed rule limits dpm concentration to 200 μg/m^3 by limiting the measured concentration of total carbon to 160 μg/m^3. The Agency recognizes that although health risks would be substantially reduced, the best available evidence indicates a significant risk of adverse health effects would remain at these levels. However, as explained in Part V of this preamble, MSHA has concluded that, because of both technology and cost considerations, the underground M/NM mining sector as a whole cannot feasibly reduce dpm concentrations further at this time.

Conclusions. MSHA has reviewed a considerable body of evidence to ascertain whether and to what level dpm should be controlled. It has evaluated the information in light of the legal requirements governing regulatory action under the Mine Act. Particular attention was paid to issues and questions raised by the mining community in response to the Agency's Advance Notice of Proposed Rulemaking and at workshops on dpm held in 1995. Based on its review of the record as a whole to date, the agency has tentatively determined that the best available evidence warrants the following conclusions:

1. The health effects associated with exposure to dpm can materially impair miner health or functional capacity.

These material impairments include sensory irritations and respiratory symptoms; death from cardiovascular, cardiopulmonary, or respiratory causes; and lung cancer.

2. At exposure levels currently observed in underground M/NM mines, many miners are presently at significant risk of incurring these material impairments over a working lifetime.

3. The proposed rule for underground M/NM mines is justified because the reduction in dpm exposure levels that would result from implementation of the proposed rule would substantially reduce the significant health risks currently faced by underground M/NM miners exposed to dpm.

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[19] In the long run, the average approaches 464 ÷ 45 = 10 lung cancers avoided per year as the number of years considered increases beyond 65.

Table III-2. Studies of acute health effects using filter based optical indicators of fine particles in the ambient air.

City	Study Years	Indicator*	Reference
Acute Mortality			
London	1963-1972, winters 1965-1972, winters	BS	Thurston et al., 1989 Ito et al., 1993
Athens	1975-1987 July, 1987 1984-1988	BS	Katsouyanni et al., 1990 Katsouyanni et al., 1993 Touloumi et al., 1994
Los Angeles	1970-1979 1970-1979	KM	Shumway et al., 1988 Kinney and Ozkaynak, 1991
Santa Clara	1980-1986, winters	COH	Fairley, 1990
Increased Hospitalization			
Barcelona	1985-1989	BS	Sunyer et al., 1993
Acute Change in Pulmonary Function			
Wageningen, Netherlands		BS	Hoek and Brunkreef, 1993
Netherlands		BS	Roemer et al., 1993

*BS (black smoke), KM (carbonaceous material), and COH (coefficient of haze) are optical measurements that are most directly related to elemental carbon concentrations, but only indirectly to mass. Site specific calibrations and/or comparisons of such optical measurements with gravimetric mass measurements in the same time and city are needed to make inferences about particle mass. However, all three of these indicators preferentially measure carbon particles found in the fine fraction of total airborne particulate matter. (EPA, 1996).

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TABLE III–3.—STUDIES OF ACUTE HEALTH EFFECTS USING GRAVIMETRIC INDICATORS OF FINE PARTICLES IN THE AMBIENT AIR

	Indicator	RR(± CI)/25μg/m³ PM increase	Mean PM levels (min/max)†
Acute Mortality			
Six Cities [A]			
Portage, WI	$PM_{2.5}$	1.030 (0.993,1.071)	11.2 (±7.8)
Topeka, KS	$PM_{2.5}$	1.020 (0.951,1.092)	12.2 (±7.4)
Boston, MA	$PM_{2.5}$	1.056 (1.038,1.0711)	15.7 (±9.2)
St. Louis, MO	$PM_{2.5}$	1.028 (1.010,1.043)	18.7 (±10.5)
Kingston/Knoxville, TN	$PM_{2.5}$	1.035 (1.005,1.066)	20.8 (±9.6)
Steubenville, OH	$PM_{2.5}$	1.025 (0.998,1.053)	29.6 (±21.9)
Increased Hospitalization			
Ontario, CAN [B]	$SO_4^=$	1.03 (1.02, 1.04)	Min/Max = 3.1 – 8.2
Ontario, CAN [C]	$SO_4^=$	1.03 (1.02, 1.04)	Min/Max = 2.0 – 7.7
	O_3	1.03 (1.02, 1.05)	
NYC/Buffalo, NY [D]	$SO_4^=$	1.05 (1.01, 1.10)	NR
Toronto, CAN [D]	H+ (Nmo1/m³)	1.16 (1.03, 1.30) *	28.8 (NR/391)
	$SO_4^=$	1.12 (1.00, 1.24)	7.6 (NR, 48.7)
	$PM_{2.5}$	1.15 (1.02, 1.78)	18.6 (NR, 66.0)
Increased Respiratory Symptoms			
Southern California [F]	$SO_4^=$	1.48 (1.14, 1.91)	R = 2 – 37
Six Cities [G] (Cough)	$PM_{2.5}$	1.19 (1.01, 1.42)**	18.0 (7.2, 37)***
	$PM_{2.5}$ Sulfur	1.23 (0.95, 1.59)**	2.5 (3.1, 61)***
	H+	1.06 (0.87, 1.29)**	18.1 (0.8, 5.9)***
Six Cities [G] (Lower Resp. Symp.)	$PM_{2.5}$	1.44 (1.15 – 1.82)**	18.0 (7.2, 37)***
	$PM_{2.5}$ Sulfur	1.82 (1.28 – 2.59)**	2.5 (0.8, 5.9)***
	H+	1.05 (0.25 – 1.30)**	18.1 (3.1, 61)***
Denver, CO [P] (Cough, adult asthmatics)	$PM_{2.5}$	0.0012 (0.0043)***	0.41 – 73
	$SO_4^=$	0.0042 (0.00035)***	0.12 – 12
	H+	0.0076 (0.0038)***	2.0 – 41
Decreased Lung Function			
Uniontown, PA [E]	$PM_{2.5}$	PEFR 23.1 (–0.3, 36.9) (per 25 μg/m³).	25/88 (NR/88)
Seattle, WA [Q] Asthmatics	$b_{ext.}$ calibrated by $PM_{2.5}$	FEV1 42 ml (12, 73) FVC 45 ml (20, 70)	5/45

(EPA, 1996).
[A] Schwartz et al. (1996a).
[B] Burnett et al. (1994).
[C] Burnett et al. (1995) O_3.
[D] Thurston et al. (1992, 1994).
[E] Neas et al. (1995).
[F] Ostro et al. (1993).
[G] Schwartz et al. (1994).
[Q] Koenig et al. (1993).
[P] Ostro et al. (1991).
† Min/Max 24 – h PM indicator level shown in parentheses unless otherwise noted as (±S.D), 10 and 90 percentile (10, 90).
* Change per 100 nmoles/m³.
** Change per 20 μg/m³ for $PM_{2.5}$; per 5 μg/m³ for $PM_{2.5}$; sulfur; per 25 nmoles/m³ for H+.
*** 50th percentile value (10, 90 percentile).
**** Coefficient and SE in parenthesis.

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Table III-4. Summary of published information from cohort studies on lung cancer and exposure to diesel exhaust.

Authors (Date)	Occupation	No. of Subjects	Follow-up period	Exposure Assessment	Smk Adj.	Findings[a]	Stat. Sig.[b]	Comments
Ahlberg et al. (1981)	Male truck drivers	35,883	1961-73	Occupation only		RR = 1.33 for drivers of "ordinary" trucks.	*	Risk relative to males employed in trades thought to have no exposure to "petroleum products or other chemicals." Comparison controlled for age and province of residence (Sweden). Based on comparison of smoking habits between truck drivers and general Stockholm population, authors concluded that excess rate of lung cancer could not be entirely attributed to smoking.
Ahlman et al. (1991)	Underground sulfide ore miners	597	1968-86	Job histories from personnel records. Measurements of alpha energy concentration from radon daughters at each mine worked.		RR = 1.45 overall. RR = 2.9 for 45-64 age group.		Age-adjusted relative risk compared to males living in same area of Finland. No excess observed among 338 surface workers at same mines, with similar smoking and alcohol consumption, based on questionnaire. Based on calculation of expected lung cancers due to radon, excess risk attributed by author partly to radon exposure and partly to diesel exhaust.
Balarajan & McDowall (1988)	Professional drivers	3,392	1950-84	Occupation only		SMR = 0.86 for taxi drivers. SMR = 1.42 for bus drivers. SMR = 1.59 for truck drivers.	*	Possibly higher rates of smoking among bus and truck drivers than among taxi drivers.
Bender et al. (1989)	Highway maintenance workers	4,849	1945-84	Occupation only		SMR = 0.69		No adjustment for healthy worker effect.
Boffetta et al. (1988)	Railroad Wrkr. Truck driver Heavy Eq. Op. Miner General Popula.	2,973 16,208 855 2,034 476,648	1982-84	Occupation and diesel exposure by questionnaire	✔	RR = 1.59 for railroad workers. RR = 1.24 for truck drivers. RR = 2.60 for heavy Eq. Op's. RR = 2.67 for miners. RR = 1.18 for subjects reporting diesel exposure compared to subjects reporting no diesel exposure.	* *	Overall RR adjusted for occupational exposures to asbestos, coal and stone dusts, coal tar & pitch, and gasoline exhaust (in addition to age and smoking). Possible biases due to volunteered participation and relatively high lung cancer rate among 98,026 subjects with unknown dpm exposure.

Dubrow & Wegman (1984)	Truck & tractor drivers	not reported	1971-73	Occupation only		sMOR = 1.73 based on 176 deaths.	*	Excess cancers observed over the entire respiratory system and upper alimentary tract.
Edling et al. (1987)	Bus workers	694	1951-83	Occupation only		SMR = 0.7 for overall cohort		Small size of cohort lacks statistical power to detect excess risk of lung cancer. No adjustment for healthy worker effect.
Garshick et al. (1988)	Railroad workers	55,407	1959-80	Job in 1959 & years of diesel exposure since 1959		RR = 1.20 for 1-4 yr. exposure. RR = 1.24 for 5-9 yr. exposure. RR = 1.32 for 10-14 yr. exposure. RR = 1.72 for ≥15 yr. exposure. Higher RR for each exposure group if shopworkers and hostlers are excluded. RR = 1.45 within highest-exposed age group (40-44).	* * * * *	Exposure groups based on exposure accumulated more than 4 yr prior to observation. Subjects with likely asbestos exposure excluded from cohort. Statistically significant results corroborated if 12,872 shopworkers and hostlers possibly exposed to asbestos are also excluded. Missing 12% of death certificates. Cigarette smoking judged to be uncorrelated with diesel exposure within cohort.
Guberan et al. (1992)	Professional drivers	1,726	1961-86	Occupation only		SMR = 1.50	*	Approx. 1/3 to 1/4 of cohort reported to be long-haul truck drivers. SMR based on regional lung cancer mortality rate.
Gustafsson et al. (1986)	Dock workers	6,071	1961-80	Occupation only		SMR = 1.32 (mortality). SMR = 1.68 (morbidity).	* *	
Gustavsson et al. (1990)	Bus garage workers	708	1952-86	Semi-quantitative based on job history & exposure intensity estimated for each job.		SMR = 1.22 for overall cohort. SMR = 1.27 for highest-exposed subgroup.		Lack of statistical significance may be attributed to small size of cohort.

Hansen (1993)	Truck drivers	14,225	1970-80	Occupation only		SMR = 1.60 for overall cohort. Some indication of increasing SMR with age (i.e., greater cumulative exposure).	*	Compared to unexposed control group of 38,301 laborers considered to "resemble the group of truck drivers in terms of work-related demands on physical strength and fitness, educational background, social class, and life style." Correction for estimated differences in smoking habits between cohort and control group reduces SMR from 1.60 to 1.52. Results judged "unlikely *** [to] have been seriously confounded by smoking habit differences."
Howe et al. (1983)	Railroad workers	43,826	1965-77	Jobs classified by diesel exposure		Rr = 1.20 for "possibly exposed." RR = 1.35 for "probably exposed."	* *	Risk is relative to unexposed subgroup of cohort. Similar results obtained for coal dust exposure. Possible confounding with asbestos and coal dust.
Kaplan (1959)	Railroad workers	32000 (Approx.)	1953-58	Jobs classified by diesel exposure		SMR=0.88 for operationally exposed. SMR = 0.72 for somewhat exposed. SMR = 0.80 for rarely exposed.		No adjustment for healthy worker effect. Clerks (in rarely exposed group) found more likely to have had urban residence than occupationally exposed workers. No attempt to distinguish between diesel and coal-fired locomotives. Results may be attributable to short duration of exposure and/or inadequate follow-up time.
Leupker & Smith (1978)	Truck drivers	183,791	May-July, 1976	Occupation only		SMR = 1.21		Lack of statistical significance may be due to inadequate follow-up period.
Lindsay et al. (1993)	Truck drivers	not reported	1965-79	Occupation only		SMR = 1.15	*	
Menck & Henderson (1976)	Truck drivers	34,800 estimated	1968-73	Occupation only		SMR = 1.65	*	Number of subjects in cohort estimated from census data.
Raffle (1957)	Transport engineers	2,666 Est. from man-years at risk	1950-55	Occupation only		SMR = 1.42		SMR calculated by combining data presented for four quadrants of London.

Rafnsson & Gunnarsdottir (1991)	Truck drivers	868	1951-88	Occupation only		SMR = 2.14	*	No trend of increasing risk with increased duration of employment or increased follow-up time. Based on survey of smoking habits in cohort compared to general male population, and fact that there were fewer than expected deaths from respiratory disease, authors concluded that differences in smoking habits were unlikely to be enough to explain excess rate of lung cancer. However, not all trucks were diesel prior to 1951, and there is possible confounding by asbestos exposure.
Rushton et al. (1983)	Bus maintenance workers	8,480	5.9 yrs (mean)	Occupation only		SMR = 1.01 for overall cohort. SMR = 1.33 for "general hand" subgroup.	*	Short follow-up period. SMR based on comparison to national rates, with no adjustment for regional or socioeconomic differences, which could account for excess lung cancers observed among general hands.
Schenker et al. (1984)	Railroad workers	2,519	1967-79	Job histories, with exposure classified as unexposed, high, low, or undefined.		RR = 1.50 for low exposure subgroup. RR = 2.77 for high exposure subgroup.		Risk relative to unexposed subgroup. Jobs considered to have similar socioeconomic status. Differences in smoking calculated to be insufficient to explain findings. Possible confounding by asbestos exposure.
Waller (1981)	Bus workers	16,828 Est. from manyears at risk	1950-74	Occupation only		SMR = 0.79 for overall cohort.		Lung cancers occurring after retirement or resignation from London Transport Authority were not counted. No adjustment for healthy worker effect.
Waxweiler et al. (1973)	Potash miners	3,886	1941-67	Miners classified as underground or surface		SMR = 1.12 for surface miners. SMR = 1.08 for underground miners.		No adjustment for healthy worker effect. SMR based on national lung cancer mortality, which is about 1/3 higher than lung cancer mortality rate in New Mexico, where miners resided. A substantial percentage of the underground subgroup may have had little or no occupational exposure to diesel exhaust.
Wong et al. (1985)	Heavy equipment operators	34,156	1964-78	Job histories, latency, & years of union membership		SMR = 0.99 for overall cohort. SMR = 1.07 for ≥20 yr member. SMR = 1.12 for ≥20 yr. latency. SMR = 1.30 for 4,075 "normal" retirees.	*	Increasing trend in SMR with latency and (up to 15 yr) with duration of union membership. Statistically significant excess lung cancers for dozer operators with 15-19 yr union membership and ≥20 yr latency. No adjustment for healthy worker effect.

a RR = Relative Risk; SMR = Standardized Mortality Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.

b An asterisk (*) indicates statistical significance based on 2-tailed test at confidence level of at least 95%.

Table III-5 – Summary of published information from case-control studies on lung cancer and exposure to diesel exhaust.

Authors (Date)	Cases	Controls	No. of Cases	No. of Controls	Exposure Assessment	Matching		Findings[a]	Stat. Sig.[b]	Comments
						Smk.	Additional			
Benhamou et al. (1988)	Histologically confirmed lung cancers	Non-tobacco related diseases	1,625	3,091	Occupational history by questionnaire.	✔	Sex, age at diagnosis, hospital, interviewer.	RR = 2.14 for miners RR = 1.42 for professional drivers.	* *	Mine type not reported. No evidence of an increase in risk with duration of exposure
Boffetta et al. (1990)	Hospitalized males with lung cancer	Hospitalized males with no tobacco related disease	2,584	5,099	Occupation classified by probability of diesel exposure	✔	Sex, age, hospital, year of interview.	OR = 0.88 for truck drivers. OR = 0.95 for probable exposure.		Adjusted for race, asbestos exposure, education.
			477	846	Occupational history & duration of diesel exposure by interview			OR = 1.21 for any self-reported diesel exposure. OR = 2.39 for than 30 yr of self-reported diesel exposure.		
Buiatti et al. (1985)	Histologically confirmed lung cancers	Patients at same hospital	376	892	Occupational history from interview	✔	Sex, age, admission date.	OR = 1.8 for taxi drivers.		
Coggon et al. (1984)	Lung cancer deaths of males under 40	Deaths from other causes in males under 40	598	1,180	Occupation from death certificate, classified as high, low, or no diesel exposure		Sex, death year, region, and birth year (approx.)	RR = 1.3 for all jobs with diesel exposure. RR=1.1 for jobs classified as high exposure.	*	Only most recent full-time occupation recorded on death certificate.
Damber & Larsson (1985)	Male patients with lung cancer	One living and one deceased without lung cancer	604	1,071	Job, with tenure, from mailed questionnaire	✔	Sex, death year, age, municipality	RR = 1.9 for non-smoking truck drivers aged <70 yr. RR = 4.5 for non-smoking truck drivers aged ≥70 yr.	*	Ex-smokers who did not smoke for at least last 10 years included with non-smokers.

DeCoufle et al. (1977)	Male patients with lung cancer	Non-neoplastic disease patients	Not reported	Not reported	Occupation only, from questionnaire	✔	Unmatched	RR = 0.92 for bus, taxi, and truck drivers. RR = 0.94 for locomotive engineers.		Selected occupation compared to clerical workers. Positive associations found before smoking adj.
Emmelin et al. (1993)	Deaths from primary lung cancer among dock workers	Dock workers without lung cancer	50	154	Semi-quantitative from work history & records of diesel fuel usage	✔	Date of birth, port, and survival to within 2 years of case's diagnosis of lung cancer	RR = 1.6 for "medium" duration of exposure. RR = 2.9 for "high" duration of exposure.		Increasing relative risk also observed using exposure estimates based on machine usage & diesel fuel consumption. Confounding from asbestos may be significant.
Garshick et al. (1987)	Deaths with primary lung cancer among railroad workers	Deaths from other than cancer, suicide, accidents, or unknown causes	1,256	2,385	Job history and tenure combined with current exposure levels measured for each job	✔	Date of birth and death	RR = 1.41 for 20+diesel-years in workers aged≤64 yr. RR = 0.91 for workers aged ≥65 yr.	*	Adjusted for asbestos exposure. Older workers had relatively short diesel exposure, or none.
Gustavsson et al. (1990)	Deaths from lung cancer among bus garage workers	Non-cases within cohort mortality study	20	120	Semi-quantitative based on job, tenure, & exposure class for each job		Born within two years of case.	RR = 1.34, 1.81, and 2.43 for increasing cumulative diesel exposure categories, relative to lowest exposure category.	*	Authors judged smoking habits to be similar for different exposure categories. RR did not increase with increasing asbestos exposure
Hall & Wynder (1984)	Hospitalized males with lung cancer	Hospitalized males with no tobacco-related diseases	502	502	Usual occupation by interview	✔	Age, race, hospital, and hospital room status	RR = 1.4 for jobs with diesel exposure.		Confounding with other occupational exposures possible.

Hayes et al. (1989)	Lung cancer deaths pooled from 3 studies	Various -- lung disease excluded	2,291	2,570	Occupational history by interview	✔	Sex, age, and either race or area of residence	OR = 1.5 for ≥10 yr truck driving. OR = 2.1 for ≥10 yr operating heavy equipment. OR = 1.7 for ≥10 yr bus driving.	*	OR adjusted for birth-year cohort and state of residence (FL, NJ, or LA), in addition to average cigarette use. Smaller OR for <10 yr in these jobs.
Lerchen et al. (1987)	New Mexico residents with lung cancer	Medicare recipients	506	771	Occupational history, industry, & self-reported exposure, by interview	✔	Sex, age, ethnicity	OR = 0.6 for ≥1 yr occupational exposure to diesel exhaust. OR = 2.1 for underground non-uranium mining.		Small number of cases and controls in diesel-exposed jobs. Possibly insufficient exposure duration. Not matched on date of birth or death.
Milne et al. (1983)	Lung cancer deaths	Deaths from any other cancer	925	6,565	Occupation from death certificate		None	OR = 3.5 for bus drivers. OR = 1.6 for truck drivers.	*	
Morabia et al. (1992)	Male lung cancer patients	Patients without lung cancer or other tobacco-related condition	1,793	3,228	Job, with coal and asbestos exposure durations, by interview	✔	Race, age, hospital, and smoking history	OR = 2.3 for miners. OR = 1.1 for bus drivers. OR = 1.0 for truck or tractor drivers.		Lung cancer reported to be associated with increasing duration of exposure to coal.
Pfluger and Minder (1994)	Professional drivers	Workers in occupational categories with no known excess lung cancer risk.	284	1,301	Occupation only, from death certificate.		None.	OR = 1.48 for professional drivers.	*	Stratified by age. Indirectly adjusted for smoking, based on smoking-rate for occupation.

Siemiatycki et al. (1988)	Squamous cell lung cancer patients by type of lung cancer	Other cancer patients	359	1,523	Semi-quantitative, from Occupa. history by interview, & exposure class for each job	✔	None	OR = 1.2 for diesel exposure; OR = 2.8 for mining.		Stratified by age, socioeconomic status, ethnicity, and blue- vs. white-collar job history. Examination of files indicated that most miners "were exposed to diesel exhaust for short periods of time."
Steenland et al. (1990)	Deaths from lung CA among Teamsters	Deaths excluding LC, bladder cancer, and motor vehicle accidents	996	1,085	Occupational history and tenure from next-of-kin, supplemented by IH data	✔	None	OR = 1.27 for diesel truck drivers with 1-24 yr. tenure. OR = 1.26 for diesel truck drivers with 25-34 yr. tenure. OR = 1.89 for diesel truck drivers with ≥35 yr. tenure.	*	Years of tenure not necessarily all at main job (i.e., diesel truck driver). OR adjusted for asbestos exposure.

Swanson et al. (1993) See also Burns & Swanson (1991)	Detroit lung cancers	Colon or rectal cancer cases	5,935	3,956	Occupational history from interview	✔	None	OR = 1.4 for heavy truck drivers with 1-9 yr tenure. OR = 1.6 for heavy truck drivers with 10-19 yr tenure. OR = 2.4 for heavy truck drivers with ≥20 yr tenure. ---------- OR = 1.2 for railroad workers with 1-9 yr tenure. OR = 2.5 for railroad workers with ≥10 yr tenure. ---------- OR = 5.03 for mining machine operators.	* * *	OR for truck drivers & RR workers is for white males, relative to corresponding group with <1 yr tenure, adjusted for age at diagnosis. Pattern of increasing risk with duration of employment also reported for black male railroad workers, based on fewer cases. OR for mining machine operators is for all males, adj. for race and age at diagnosis.
Williams et al. (1977)	Male lung cancer patients	Other male cancer patients	432	2,817	Main lifetime occupation from interview	✔	Sex	OR = 1.52 for male truck drivers.		Controlled for age, race, alcohol use, and socioeconomic status. Unexplained discrepancies in reported number of controls.

[a] RR = Relative Risk; OR = Odds Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.
[b] An asterisk (*) indicates statistical significance based on 2-tailed test at confidence level of at least 95%.

Table III-6. — Hypothesized Mechanisms of Particulate Toxicity[a]

Response	Description
Increased Airflow Obstruction	PM exposure may aggravate existing respiratory symptoms which feature airway obstruction. PM-induced airway narrowing or airway obstruction from increased mucous secretion may increase abnormal ventilation/perfusion ratios in the lung and create hypoxia. Hypoxia may lead to cardiac arrhythmias and other cardiac electrophysiologic responses that in turn may lead to ventricular fibrillation and ultimately cardiac arrest. For those experiencing airflow obstruction, increased airflow into non-obstructed areas of the lung may lead to increased particle deposition and subsequent deleterious effects on remaining lung tissue, further exacerbating existing disease processes. More frequent and severe symptoms may be present or more rapid loss of function.
Impaired Clearance	PM exposure may impair clearance by promoting hypersecretion of mucus which in turn results in plugging of airways. Alterations in clearance may also extend the time that particles or potentially harmful biogenic aerosols reside in the tracheobronchial region of the lung. Consequently alterations in clearance from either disturbance of the mucociliary escalator or of macrophage function may increase susceptibility to infection, produce an inflammatory response, or amplify the response to increased burdens of PM. Acid aerosols impair mucociliary clearance.
Altered Host Defense	Responses to an immunological challenge (e.g., infection), may enhance the subsequent response to inhalation of nonspecific material (e.g., PM). PM exposure may also act directly on macrophage function which may not only affect clearance of particles but also increase susceptibility and severity of infection by altering their immunological function. Therefore, depression or over-activation of the immune system, caused by exposure to PM, may be involved in the pathogenesis of lung disease. Decreased respiratory defense may result in increased risk of mortality from pneumonia and increased morbidity (e.g., infection).
Cardiovascular Perturbation	Pulmonary responses to PM exposure may include hypoxia, bronchoconstriction, apnea, impaired diffusion, and production of inflammatory mediators that can contribute to cardiovascular perturbation. Inhaled particles could act at the level of the pulmonary vasculature by increasing pulmonary vascular resistance and further increase ventilation/perfusion abnormalities and hypoxia. Generalized hypoxia could result in pulmonary hypertension and interstitial edema that would impose further workload on the heart. In addition, mediators released during an inflammatory response could cause release of factors in the clotting cascade that may lead to increased risk of thrombus formation in the vascular system. Finally, direct stimulation by PM of respiratory receptors found throughout the respiratory tract may have direct cardiovascular effects (e.g., bradycardia, hypertension, arrhythmia, apnea and cardiac arrest).
Epithelial Lining Changes	PM or its pathophysiological reaction products may act at the alveolar capillary membrane by increasing the diffusion distances across the respiratory membrane (by increasing its thickness) and causing abnormal ventilation/perfusion ratios. Inflammation caused by PM may increase "leakiness" in pulmonary capillaries leading eventually to increased fluid transudation and possibly to interstitial edema in susceptible individuals. PM induced changes in the surfactant layer leading to increased surface tension would have the same effect.
Inflammatory Response	Diseases which increase susceptibility to PM toxicity involve inflammatory response (e.g., asthma, COPD, and infection). PM may induce or enhance inflammatory responses in the lung which may lead to increased permeability, diffusion abnormality, or increased risk of thrombus formation in vascular system. Inflammation from PM exposure may also decrease phagocytosis by alveolar macrophages and therefore reduce particle clearance. (See discussions above for other inflammatory effects from PM exposure.)

[a]This table reproduces Table V-2 of the EPA staff paper. The citation in the staff paper indicates the table is derived from information in the EPA criteria document on particulate matter (p. 13-67 to 72; p. 11-179 to 185) and information in Appendix D of EPA staff paper.

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IV. Discussion of Proposed Rule

This part of the preamble explains, section-by-section, the provisions of the proposed rule. As appropriate, this part references discussions in other parts of this preamble: in particular, the background discussions on measurement methods and controls in Part II, and the feasibility discussions in Part V.

The proposed rule would add nine new sections to 30 CFR Part 57 immediately following § 57.5015. It would not amend any existing sections of that part.

Section 57.5060 Limit on Concentration of Diesel Particulate Matter

This section of the proposed rule limits the concentration of dpm in underground metal and nonmetal mines. It has four subsections.

Paragraph (a) of § 57.5060 provides that 18 months after the date of promulgation, dpm concentrations to which miners are exposed would be limited by restricting total carbon to 400 micrograms per cubic meter of air. As proposed by the rule, this limit would apply only for a period of 36 months; accordingly, it is sometimes referred to in this preamble as the ''interim'' concentration limit.

Paragraph (b) of § 57.5060 provides that after five years the proposed concentration limit would be reduced, restricting total carbon to 160 micrograms per cubic meter of air. This is sometimes referred to in this preamble as the ''final'' concentration limit.

Paragraph (c) of § 57.5060 provides for a special extension of up to two additional years in order for a mine to comply with the final concentration limit. This special extension is only available when the mine operator can establish that the final concentration limit cannot be met within the five years allotted due to technological constraints. The proposed rule establishes the details that must be provided in the application process, and conditions that must be observed during the special extension period. Paragraph (c) of the proposed rule refers to this extension as ''special'' because the proposed rule would also provide all mines in this sector with up to five years to meet the final concentration limit.

Paragraph (d) of § 57.5060 provides that an operator shall not utilize personal protective equipment to comply with either the interim or final concentration limit. Moreover, it provides that an operator shall not utilize administrative controls to comply with either the interim or final concentration limit. These restrictions do not explicitly apply to an operator who has been provided with a special extension of time to comply with the final concentration limit pursuant to paragraph (c).

Choice of Controls. With the exceptions specified in paragraph (d), the proposed rule contemplates that an operator of an underground metal or nonmetal mine have complete discretion over the controls utilized to meet the interim and final concentration limits. No specific controls would be required for any type of diesel engine, for any type of diesel equipment, or for any type of mine in this sector. An operator could filter the emissions from diesel-powered equipment, install cleaner-burning engines, increase ventilation, improve fleet management, or use a variety of other available controls.

Because information on available controls has been described in Part II of this preamble, including the ''Toolbox'' (appended to the end of this document is a copy of an MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox''), further discussion is not provided here. Reviewers are also referred to the extensive discussion of available controls in Part V of this preamble concerning the technological and economic feasibility of this rule for the underground metal and nonmetal mining sector.

To help mine operators decide among various alternative combinations of engineering and ventilation controls, MSHA has developed a model that it believes will assist an operator to determine, for a production area of a mine, the effect of any combination of controls on existing dpm concentrations in that area. This model, known as the ''Estimator'', is in the form of a spreadsheet template; this permits instant display of outcomes as inputs are altered. The model is described in detail in Part V of this preamble, and some examples illustrating its potential utility are described there. MSHA welcomes comments from the mining community concerning this model, and encourages mine operators to submit their results as part of their comments.

Expression of Limits. The interim and final concentration limits on diesel particulate matter are expressed in terms of a restriction on the amount of total carbon present. The purpose of the interim and final concentration limits is to limit the amount of diesel particulate matter to which miners are exposed; but the limit is being expressed in terms of the measurement method that MSHA intends to utilize to determine the concentration of dpm. The idea is to enable miners, mine operators and inspectors to directly compare a measurement result with the applicable limit.

As discussed in connection with proposed § 57.5061(a), MSHA intends to use a sampling and analytical method developed by NIOSH (NIOSH Analytical Method 5040) to measure dpm concentrations for compliance purposes. NIOSH's Analytical Method 5040 accurately determines the amount of total carbon (TC) contained in a dpm sample from any underground metal and nonmetal mine.

As explained in detail in Part II of this preamble, whole diesel particulate matter can be measured in a variety of ways. But to date, a method that measures whole dpm directly has not been validated as providing accurate measurements at lower concentration levels with the consistency desirable for compliance purposes. However, MSHA believes that for underground metal and nonmetal mines, there is a surrogate method with the requisite accuracy. The surrogate is a method that determines the amount of certain component parts of whole dpm. Whole dpm basically consists of: the elemental carbon (EC) making up the core of the dpm particle; the organic carbon (OC) contained in adsorbed hydrocarbons; and some sulfates. (See Figure II–3 for a graphic representation of a dpm particle). The total carbon (TC) consists of the EC and the OC. NIOSH Method 5040 has been shown to measure TC with adequate accuracy. As discussed in Part II, MSHA is not aware at this time of any interferents that would in practice preclude MSHA from using this method to obtain consistent results in underground metal and nonmetal mines; hence, the Agency is proposing to use this method for compliance.

TC represents approximately 80–85 percent of the total mass of dpm emitted in the exhaust of a diesel engine (the remaining 15–20 percent consists of sulfates and the various elements bound up with the organic carbon to form the adsorbed hydrocarbons). Using the lower boundary of this range, limiting the concentration of total carbon to 400 micrograms per cubic meter (400_{TC} μg/m^3) limits the concentration of whole diesel particulate to about 500_{DPM} μg/m^3. Similarly, limiting the concentration of total carbon to 160_{TC} μg/m^3 limits the concentration of whole diesel particulate to about 200_{DPM} μg/m^3.

By way of comparison, MSHA has measured dpm average concentrations in underground metal and nonmetal mines from about 68_{DPM} μg/m^3 to $1{,}835_{DPM}$ μg/m^3. MSHA has recorded

some concentrations as high as $5,570_{DPM}$ μg/m³. Complete information about these measurements, and the methods used in measuring them, are discussed in Part III of this preamble.

Where the Concentration Limit Applies. The concentration limits—both interim and final—would apply only in areas where miners normally work or travel. The purpose of this restriction is to ensure that mine operators do not have to monitor particulate concentrations in areas where miners do not normally work or travel — e.g., abandoned areas of a mine. However, the appropriate concentration limit would need to be maintained in any area of a mine where miners normally work or travel even if miners might not be present at any particular time. (For a discussion of MSHA's proposed sampling strategy, see the discussion of proposed § 57.5061(a)).

Full-shift, 8-hour Equivalent. The proposed interim and final concentration limits are expressed in terms of the average airborne concentration during each full shift expressed as an 8-hour equivalent. Measuring over a full shift ensures that average exposure is monitored over the same period to which the limit applies. Using an 8-hour equivalent dose ensures that a miner who works extended shifts—and many do—would not be exposed to more dpm than a miner who works a normal shift. The Agency welcomes comment on whether a more explicit definition is required in this regard.

Concentration Limit: Time to Meet. As noted, the dpm limitation being proposed would require metal and nonmetal mines to reduce dpm concentrations in areas where miners normally work or travel to about 200 micrograms per cubic meter of air (specifically, total carbon would have to be restricted to 160 micrograms per cubic meter of air). Proposed § 57.5060 provides an extension of time for underground metal and nonmetal mines to meet the concentration limit. Mines would not have to meet any limit within 18 months of the rule's promulgation. This period would be used to provide compliance assistance to the metal and nonmetal mining community to ensure it understands how to measure and control diesel particulate matter concentrations in individual operations. Moreover, the proposed rule would provide all mines in this sector three and a half additional years to meet the final concentration limit established by proposed § 57.5060(b). During this time, however, all mines would have to bring dpm concentrations down to 500 micrograms per cubic meter by complying with a restriction on the concentration of submicrometer total carbon of 400 micrograms per cubic meter.

MSHA established these requirements after carefully reviewing questions presented by the mining community regarding economic and technological feasibility of requiring all mines in this sector to meet the proposed concentration limit with available controls. This review is presented in Part V of this preamble. MSHA has studied a number of metal and nonmetal mines in which it believed dpm might be particularly difficult to control. The Agency has tentatively concluded that in combination with the ''best practices'' required under other provisions of the proposed rule (§§ 57.5065, 57.5066 and 57.5067), engineering and work practice controls are available that can bring dpm concentrations in all underground metal and nonmetal mines down to or below 400_{TC} μg/m³ within 18 months. Moreover, based on the mines it has examined to date, the Agency has tentatively concluded that controls are available to bring dpm concentrations in underground metal and nonmetal mines down to or below 160_{TC} μg/m³ within 5 years.

The Agency has tentatively concluded that it may not be feasible to require this sector, as a whole, to lower dpm concentrations further, or to implement the required controls more swiftly. Nevertheless, as noted in Part V, the Agency is seeking information, examples and comment that will assist it in making a final determination on these points.

Special Extension. An operator may request more than five years to comply with the final concentration limit only in the case of technological constraints that preclude compliance. MSHA has determined that it is economically feasible for the mining industry as a whole to comply with the proposed concentration limit within five years. In light of the risks to miners posed by dpm, the Agency does not believe the economic constraints of a particular operator should provide an adequate basis for a further extension of time for that operator, and the proposal would not provide for any extension grounded on economic concerns. Moreover, if it is technologically feasible for an operator to reduce dpm concentrations to the final limit in time through any approach, no extension would be permitted even if a more cost effective solution might be available in the future for that operator.

However, the Agency believes that if an operator can actually demonstrate that there is no technological solution that could reduce the concentration of dpm within five years, a special extension would be warranted. As a practical matter, MSHA believes that very few, if any, underground metal and nonmetal mining operations should need a special extension. MSHA bases this belief on information discussed in Part V of this preamble with respect to the feasibility of the proposed standard, and comments on that information are specifically solicited. Despite this information, and just in case a few mines experience technical problems that cannot be foreseen at this time, the proposed rule would make provision for a special extension to allow up to an additional two years to comply with the final concentration limit.

Extension Application. Proposed § 57.5060(c)(1) provides that if an operator of an underground metal or nonmetal mine can demonstrate that there is no combination of controls that can, due to technological constraints, be implemented within five years to reduce the concentration of dpm to the limit, MSHA may approve an application for an additional extension of time to comply with the dpm concentration limit. Under the proposal, such a special extension is available only once, and is limited to 2 years. To obtain a special extension, an operator must show that diesel powered equipment was used in the mine prior to publication of the rule, demonstrate that there is no off-the-shelf technology available to reduce dpm to the limit specified in § 57.5060, and establish the lowest achievable concentration of dpm attainable. The proposed rule further requires that to establish the lowest achievable concentration, the operator is to provide sampling data obtained using NIOSH Method 5040 (the method MSHA will use when determining concentrations for compliance purposes). The sampling method is further discussed in connection with proposed § 57.5061(a).

The application would also require the mine operator to specify the actions that are to be taken to ''maintain the lowest concentration of diesel particulate achievable'' (such as strict adherence to an established control plan) and to minimize miner exposure to dpm (e.g., provide suitable respirators). MSHA's intent is to ensure that personal protective equipment and administrative controls are permitted only as a last and temporary resort to bridge the gap between what can be accomplished with engineering and work practice controls and the concentration limit. It is not the Agency's intent that personal protective equipment or administrative controls be

permitted during the extension period as a substitute for engineering and work practice controls that can be implemented immediately. The Agency would welcome comments on whether more explicit clarification of this point in the proposed rule is required.

Filing, Posting and Approval of Extension Application. The proposed rule would require that an application for an extension be filed (after being posted for 30 days at the mine site) no later than 6 months (180 days) in advance of the date of the final concentration limit (160tc μg/m^3). The proposed rule would also require that a copy of the approved extension be posted at the mine site for the duration of the extension period. In addition, a copy of the application would also have to be provided to the authorized representative of the miners.

The application would be required to be approved by MSHA before it becomes effective. While pre-approval of plans is not the norm in this sector, an exception to the final concentration limit cannot be provided without careful scrutiny. Moreover, in some cases, the examination of the application may enable MSHA to point out to the operator the availability of solutions not considered to date.

While the proposed rule is not explicit on the point, it is MSHA's intent that primary responsibility for approval of the operator's application for an extension will rest with MSHA's district managers. This ensures familiarity with the mine conditions, and provides an opportunity to consult with miners as well. At the same time, MSHA recognizes that district managers may not have the expertise required to keep fully abreast of the latest technologies and of solutions being used in similar mines elsewhere in the country. Accordingly, the Agency intends to establish, within its Technical Support directorate in Washington, D.C., a special panel to consult on these issues and to provide assistance to its district managers. MSHA would welcome comments on this matter, and as to whether it should incorporate further specifics in this regard into the final rule.

Personal Protective Equipment and Administrative Controls. Paragraph (d) provides that an operator shall not utilize personal protective equipment (e.g., respirators) or administrative controls (e.g., rotation of miners) to comply with either the interim or final concentration limit. Moreover, it provides that an operator shall not utilize administrative controls (e.g., the rotation of miners) to comply with either the interim or final concentration limit.

Limiting individual miner exposure through rotation or through the use of respirators would not reduce the airborne concentrations of particulate matter. It is accepted industrial hygiene practice to eliminate or minimize hazards at the source by using engineering or work practices, before resorting to alternative controls. Moreover, administrative controls are not considered acceptable in the case of potential carcinogens, since they result in placing more workers at risk.

MSHA intends that the normal meaning be given to the terms personal protective equipment and administrative controls, and welcomes comments as to whether more specificity would be useful. For example, the Agency assumes the mining community understands that an environmentally controlled cab for a piece of equipment is not a piece of personal protective equipment; indeed, the cost estimates for the proposed rule assume that such cabs will be a commonly used control to meet the proposed limits in those situations in which the only miners present in an area are equipment operators (see Part V of this preamble and the Agency's PREA).

Section 57.5061 Compliance Determinations

Under the proposed rule, compliance sampling would be performed by MSHA directly, and a single sample would be adequate to establish a violation.

The proposed rule further provides that MSHA will collect and analyze dpm samples for total carbon (TC) content using NIOSH Method 5040 (or by using any method subsequently determined by NIOSH to provide equal or improved accuracy in mines subject to this part). NIOSH Method 5040 provides for sample collection using a dust sampler pump and an open face filter. The filters are analyzed for elemental carbon (EC) and organic carbon (OC) content using the thermo-optical technique; the EC and OC concentration determinations are then added together to obtain the TC concentration of the sample.

Measurement Method for Compliance. Section 3 of Part II of this preamble discusses alternative methods for measuring dpm concentrations. As noted in that discussion, after considering the comments received in response to MSHA's ANPRM, reviewing the available technical information submitted in response to the ANPRM and reviewing the status of current technology, MSHA believes that NIOSH Method 5040 provides an accurate method of determining the total carbon content of a sample collected in any underground metal or nonmetal mine when using the sampling procedures specified in Method 5040. At the present time, Method 5040 is the only method that meets NIOSH's accuracy criterion for determinations of both EC and OC down to concentrations as low as those that will need to be measured to determine compliance with the final concentration limit being proposed. Accordingly, MSHA proposes to use this method for determining TC concentrations for compliance purposes.

Margin of Error. Before issuing a citation, MSHA intends to take into consideration uncertainty associated with the sampling and analytical process, as it does in other cases. While the measurement uncertainty has not been established for samples collected in mines, NIOSH has established the variability associated with Method 5040 to be approximately 6% (one relative standard deviation). If MSHA used the variability value established by NIOSH and allowed for a confidence level of 95%, MSHA would not issue a citation until the measured value was greater than 1.10 times the levels established in § 57.5060. For example, if the variability established by NIOSH is used, during the interim period when the limit is 400_{TC} μg/m^3 a noncompliance determination would not be made unless the TC measurement exceeded 440 μg/m^3.

MSHA recognizes that the measurement uncertainty may be higher for samples collected in mines, and intends to establish as the ''margin of error'' required to achieve a 95% confidence level for all noncompliance determinations based on samples collected in mines. The Agency anticipates that the margin of error will end up being somewhere between 10% and 20%, but will be governed by the actual data on this point.

Sampling Strategy. Proposed § 57.5060 would establish a concentration limit for areas of a mine where miners normally work or travel to limit miner exposure to dpm. In using this language, MSHA intends that the limits on the concentration of dpm would apply to persons, occupations or areas, as with coal dust. Accordingly, MSHA intends that inspectors have the flexibility to determine, on a mine by mine basis, the most appropriate method to assess the level of hazard that exists. The Agency may sample by attaching a sampler to an individual miner, or by locating the sampler on a piece of equipment where a miner may

work, or at a fixed site where miners normally work or travel.

Sampling strategy was discussed by commenters who responded to the ANPRM. Several commenters indicated that the sampling strategy should ensure that samples taken are representative of actual exposure. Other commenters stated that the sampling strategy would be dictated by the measurement method, and that several strategies could be used to determine the hazard. They stated that the strategy should not be defined so narrowly as to exclude development of new sampling methods.

A related issue addressed by the commenters was whether personal or area sampling would be more appropriate. Most commenters indicated that personal sampling was the most reliable indicator of worker exposure. Some noted that in underground mines which use mobile diesel equipment, the positions of diesel-powered vehicles with respect to intake and return air streams vary from hour to hour. Therefore, it is virtually impossible to obtain meaningful information from stationary instruments. Several commenters stated that area sampling was appropriate to define action levels that may trigger personal sampling or to evaluate effectiveness of controls. Some additional concerns were raised concerning the accuracy of the sampling device when worn by a miner.

MSHA agrees that there may be circumstances when either area or personal sampling may be appropriate. Considering the mobility of the equipment it may not always be feasible to sample individual workers; for example, if work practice would include rotation of workers into an area. In this case, area sampling would be more appropriate to establish a hazard. MSHA does recognize that the diesel particulate is ultimately transported to return entries or exhaust openings of a mine.

The purpose of these entries is to provide a means to transport contaminated air away from the active workings. MSHA does not intend to conduct area sampling in these areas; however, personal sampling of workers who enter these areas could be conducted. These circumstances would be evaluated on a mine-by-mine basis during mine inspections. Accordingly, MSHA will utilize either area or personal (within 36'' of a miners breathing zone) sampling to determine whether corrective actions must be taken by a mine operator. In return entries, measurements made in the immediate area where diesel equipment is being operated will be collected at locations that are no closer than five feet from any piece of operating diesel equipment.

Section 57.5062 Diesel Particulate Matter Control Plan

A determination of noncompliance with either the interim or final concentration limit prescribed by § 57.5060 would trigger a requirement that: first, the operator establish a diesel particulate matter control plan (dpm control plan)— or modify the plan if one is already in effect; and second, the operator demonstrate that the new or modified plan is effective in controlling the concentration of dpm to the applicable concentration limit.

No Advance Approval Required. The agency proposes to continue to observe the metal and nonmetal mine plan tradition by not requiring a formal plan approval process. That is, the plan would not require advance approval of the MSHA District Manager. A dpm control plan would, however, have to meet certain requirements set forth in the proposed rule, and it would be a violation of § 57.5062 if MSHA determines the operator has failed to include the necessary particulars.

Elements of Plan. Under proposed § 57.5062(b), a dpm control plan must describe the controls the operator will utilize to maintain the concentration of diesel particulate matter to the applicable limit specified by § 57.5060. The plan must also include a list of diesel-powered units used by the mine operator, together with information about any unit's emission control device, and the parameters of any other methods used to control the concentration of diesel particulate matter.

Relationship to Ventilation Plan. At the discretion of the operator, the dpm control plan may be consolidated with the ventilation plan required by § 57.8520.

Demonstration of Plan Effectiveness. The proposed rule would require monitoring to verify that the dpm control plans are actually effective in reducing dpm concentrations in the mine to the applicable concentration limit. Because the dpm control plan was initiated as a result of a compliance action, the proposed rule would require the use of the same measurement method used by MSHA in compliance determinations—total carbon using NIOSH Method 5040—to conduct verification sampling.

Effectiveness must be demonstrated by ''sufficient'' monitoring to confirm that the plan or amended plan will control the concentration of diesel particulate to the applicable limit under conditions that can be ''reasonably anticipated'' in the mine. The proposed rule does not specify that any defined number of samples must be taken—the intent is that the sampling provide a fair picture of whether the plan or amended plan is working. MSHA will determine compliance with this obligation based on a review of the situation involved. While an MSHA compliance sample may be an indicator that the operator has not fulfilled their obligation under this section to undertake monitoring ''sufficient'' to verify plan effectiveness, it would be inconclusive on that point. The Agency welcomes comment on this point.

Similarly, the Agency welcomes comment on whether, and how, it should define the term ''reasonably anticipated.'' With respect to coal dust, the Dust Advisory Committee recommended that ''MSHA should define the range of production values which must be maintained during sampling to verify the plan. This value should be sufficiently close to maximum anticipated production'' (MSHA, 1996). For dpm, the equivalent approach might be based on worst-case operating conditions of the diesel equipment—e.g., all equipment is being operated simultaneously with the least ventilation.

Recordkeeping Retention and Access. Pursuant to § 57.5062(b), a copy of the current dpm control plan is to be maintained at the mine site during the duration of the plan and for one year thereafter. Proposed § 57.5062(c) would require that verification sample results be retained for 5 years. Proposed § 57.5062(d) provides that both the control plan and sampling records verifying effectiveness be made available for review, upon request, by the authorized representative of the Secretary, the Secretary of Health and Human Services, and/or the authorized representative of miners. Upon request of the District Manager or the authorized representative of miners, a copy of these records is to be provided by the operator.

Duration. The proposal would require the dpm control plan to remain in effect for three years from the date of the violation resulting in the establishment/modification of the plan. As discussed in Part I of this preamble (Question and Answer 18), MSHA believes operators have sufficient time under the proposed rule to come into compliance with the concentration limits. If a problem exists, maintaining a plan in effect long enough to ensure that daily mine practices really change, is an important safeguard.

Modification During Plan Lifetime. A violation of § 57.5060 would require the

mine operator to modify the dpm control plan to reflect changes in mining equipment and/or the mine environment and the operator would be required to demonstrate to MSHA the effectiveness of the modified plan.

Also, proposed § 57.5062(e)(2) would require the mine operator to modify the dpm control plan to reflect changes in mining equipment and/or the mine environment and the operator would be required to demonstrate to MSHA the effectiveness of the modified plan.

Compliance with Plan Requirements. Once an underground metal or nonmetal mine operator adopts a dpm control plan, it will be considered regulation for the mine. Proposed 57.5062(f) specifically provides that MSHA would not need to establish (by sampling) that an operator is currently in violation of the applicable concentration limit under § 57.5060 in order to determine by observation that an operator has failed to comply with any requirement of the mine's dpm control plan.

Section 57.5065 Fueling and idling practices

Fueling Practices. Part II of this preamble contains some background information on fueling practices, together with information about the rules currently applicable in underground coal mines.

Proposed § 57.5065(a) would require underground metal and nonmetal mine operators to use only low-sulfur fuel having a sulfur content of no greater than 0.05 percent. This requirement is identical to that currently required for diesel equipment used in underground coal mines [30 CFR 75.1901(a)]. Both number 1 and number 2 diesel fuel meet the requirement of this proposal.

Sulfur content can have a significant effect on diesel emissions. Use of low sulfur diesel fuel reduces the sulfate fraction of dpm emissions, reduces objectionable odors associated with diesel exhaust, and allows oxidation catalysts to perform properly. A major benefit of using low sulfur fuel is that the reduction of sulfur allows for the use of some aftertreatment devices such as catalytic converters and catalyzed particulate traps which were prohibited with fuels of high sulfur content (greater than 0.05 percent sulfur). MSHA believes the use of these aftertreatment devices is important to the mining industry because they will be necessary to meet the levels specified. The requirement to use low sulfur fuel will allow these devices to be used without additional adverse effects caused by the high sulfur fuel. As noted in Part IV of the PREA, MSHA does not believe such a requirement will add additional cost.

Proposed paragraph (b) of this section would require mine operators to use only diesel fuel additives that have been registered by the Environmental Protection Agency (40 CFR Part 79). Again, this proposed rule is consistent with that currently required for diesel equipment used in underground coal mines [30 CFR 75.1901(c)]. The restricted use of additives would ensure that diesel particulate concentrations would not be inadvertently increased, while also protecting miners against the emission of other toxic contaminants. MSHA issued Program Information Bulletin No. P97–10, on May 5, 1997, that discusses the fuel additives list. The requirements of this paragraph do not place an undue burden on mine operators because operators need only verify with their fuel suppliers or distributors that the additive purchased is included on the EPA registration list.

Idling Practices. Proposed § 57.5065(c) would prohibit idling of mobile-powered diesel equipment, except as required for normal mining operations. The idling requirements being proposed for underground metal and nonmetal mines are consistent with the idling requirements currently required for underground coal mines (§ 75.1916(d)).

MSHA believes that keeping idling to a minimum is very important to reduce pollution in mine atmospheres. Engines operating without a load during idling can produce significant levels of both gaseous and particulate emissions. Even though the concentration emitted from a single idling engine might have little effect on the overall mine environment, a localized, increased exposure of the gaseous and particulate concentrations would occur. In underground operations, an engine idling in an area of minimal ventilation or a ''dead air'' space could cause an excess exposure to the gaseous emissions, especially carbon monoxide, as well as to dpm. Eliminating unnecessary idling would reduce localized exposure to high particulate concentrations.

While the proposed rule is intended to prevent idling except as required for normal mining operations, it does not define normal mining operations. MSHA envisions ''normal mining operations'' to be activities such as idling while waiting for a load to be unhooked, or waiting in line to pick up a load. These types of activities would be permitted. Idling while eating lunch is normally not part of the job and operators would be in violation of the standard. Idling necessary due to very cold weather conditions would be permitted. On the other hand, idling in other weather conditions just to keep balky, older engines running would not be permitted; in such cases, the correct approach is better maintenance. MSHA welcomes comments on whether a more specific definition is necessary, particularly in light of any experience to date under the parallel rule for diesel equipment in underground coal mines.

Section 57.5066 Maintenance Standards

Proposed § 57.5066(a) would place emphasis on the fact that diesel engine emissions are lower from an engine that is properly maintained than from an engine that is not. Part II of the preamble provides more information on this point.

Approved Engines. Proposed § 57.5066(a)(1) would require that mine operators maintain any approved diesel engine in ''approved'' condition. Under MSHA's approval requirements, engine approval is tied to the use of certain parts and engine specifications. When these parts or specifications are changed (i.e., an incorrect part is used, or the engine timing is incorrectly set), the engine is no longer considered by MSHA to be in approved condition.

Often, engine exhaust emissions will deteriorate when this occurs. Maintaining approved engines in their approved condition will ensure near-original performance of an engine, and maximize vehicle productivity and engine life, while keeping exhaust emissions at approved levels. The proposed maintenance requirements for approved engines in this rule are already applicable to underground coal mines, where only approved engines may be utilized (30 CFR 75.1914).

Thus in practice, with respect to approved engines, mine maintenance personnel will have to maintain the following engine systems in near original condition: air intake, cooling, lubrication, fuel injection and exhaust. These systems must be maintained on a regularly scheduled basis to keep the system in its ''approved'' condition and thus, operating at its expected efficiency.

One of the best ways to ensure these standards are observed is to implement a proper maintenance program in the mine—but the proposed rule would not require operators to do this. A good program should include compliance with manufacturers' recommended maintenance schedules, maintenance of accurate records and the use of proper maintenance procedures. MSHA's diesel toolbox provides more information about the practices that should be

followed in maintaining diesel engines in mines.

Non-approved Engines. For any non-approved diesel engine, proposed paragraph (a)(2) would require mine operators to maintain the emissions related components to manufacturer specifications.

The term ''emission related components,'' refers to the parts of the engine that directly affect the emission characteristics of the raw exhaust. These are basically the same components which MSHA examines for ''approved'' engines. They are the piston, intake and exhaust valves, cylinder head, injector, fuel injection pump, governor, turbocharger, after cooler, injection timing, and fuel pump calibrator.

It is not MSHA's intent that engines be torn down and the engine components be compared against the specifications in manufacturer maintenance manuals. Primarily, the Agency is interested in ensuring that engines are maintained in accordance with the schedule recommended by the manufacturer. However, if it becomes evident that the engines are not being maintained to the correct specifications or are being rebuilt in a configuration not in line with manufacturers' specifications or approval requirements, an inspector may ask to see the manuals to confirm that the right manuals are being used, or call in MSHA experts to examine an engine to confirm whether basic specifications are being properly observed. MSHA welcomes comment on alternative ways to phrase this requirement so Agency has a basis for ensuring compliance while minimizing the opportunity for over-prescriptiveness.

Emission or Particulate Control Device. Proposed paragraph (a)(3) would require that any emission or particulate control device installed on diesel-powered equipment be maintained in effective operating condition. Depending on the type of devices installed on an engine, this would involve having trained personnel perform such basic tasks as regularly cleaning aftertreatment filters, using methods recommended by the manufacturer for that purpose, or inserting appropriate replacement filters when required, checking for and repairing any exhaust system leaks, and other appropriate actions.

Tagging of Equipment for Noncompliance. Proposed § 57.5066(b)(1) would require underground metal and nonmetal mine operators to authorize and require miners operating diesel powered equipment to affix a visible and dated tag to the equipment at any time the equipment operator detects an emission-related problem.

MSHA believes tagging will provide an effective and efficient method of alerting all mine personnel that a piece of equipment needs to be checked by qualified service personnel. The tag may be affixed because the equipment operator detects a problem through a visual exam conducted before the equipment is started, or because of a problem that comes to the attention of the equipment operator during mining operations, (i.e., black smoke while the equipment is under normal load, rough idling, unusual noises, backfiring, etc.)

MSHA is not proposing that equipment tagged for potential emission problems be automatically taken out of service. The proposal is not, therefore, directly comparable to a ''tag-out'' requirement like OSHA's requirement for automatic powered machinery, nor is it as stringent as MSHA's requirement to remove from service certain equipment ''when defects make continued operation hazardous to persons'' (see 30 CFR 57.14100). The proposed rule is not as stringent as these requirements because, although exposure to dpm emissions does pose a serious health hazard for miners, the existence or scope of an equipment problem cannot be determined until the equipment is examined or tested by a person competent to assess the situation. Moreover, the danger is not as immediate as, for example, an explosive hazard.

Proposed § 57.5066(b)(2) would require that the equipment be ''promptly'' examined by a person authorized by the mine operator to maintain diesel equipment. (The qualifications for those who maintain and service diesel engines are discussed below). The Agency has not tried to define the term ''promptly,'' but welcomes comment on whether it should do so—in terms, for example, of a limited number of shifts. The presence of a tag serves as a caution sign to miners working on or near the equipment, as well as a reminder to mine management, as the equipment moves from task to task throughout the mine. While the equipment is not barred from service, operators would be expected to use common sense and not use it in locations in which diesel particulate concentrations are known to be high.

Proposed paragraph (b)(2) would permit a tag to be removed after the defective equipment has been examined.

The design of the tag is left to the discretion of the mine operator, with the exception that the tag must be able to be marked with a date. Comments are welcome on whether some or all elements of the tag should be standardized to ensure its purpose is met.

Tagged Equipment Log. Proposed § 57.5066(b)(3) would require a log to be retained of all equipment tagged. Moreover, the log must include the date the equipment is tagged, the date the tagged equipment is examined, the name of the person making the examination, and the action taken as a result of the examination. Records in the log about a particular incident must be retained for at least a year after the equipment is tagged.

MSHA does not expect the log to be burdensome to the mine operator or mechanic examining or testing the engine. Based on MSHA's experience, it is common practice to maintain a log when equipment is serviced or repaired, consistent with any good maintenance program. The records of the tagging and servicing, although basic, provide mine operators, miners and MSHA with a history that will help in determining whether a maintenance program is being effectively implemented.

Qualified Person. Proposed paragraph (c) would require that persons who maintain diesel equipment in underground metal and nonmetal mines be ''qualified,'' by virtue of training and experience, to ensure the maintenance standards of proposed § 57.5066(a) are observed. Paragraph (c) also requires that an operator retain appropriate evidence of ''the competence of any person to perform specific maintenance tasks'' in compliance with the requirement's maintenance standards for one year.

The ANPRM requested information concerning specialized training for those persons working on equipment that uses particulate reduction technology and the costs associated with the training. Commenters stated that any equipment modifications will require additional training. The extent and costs would vary widely depending on the type of devices used. MSHA agrees that training should be given when new devices or modifications to machines are made. The training cost will be dependent on the complexity of the control device.

Operators of underground coal mines where diesel-powered equipment is used are required, as of November 25, 1997, to establish programs to ensure that persons who perform maintenance, tests, examinations and repairs on diesel-powered equipment are qualified (30 CFR 75.1915). The unique conditions in underground coal mines require the use of specialized

equipment. Accordingly, the qualifications of the persons who maintain this equipment generally must be appropriately sophisticated.

If repairs and adjustments to diesel engines used in underground metal and nonmetal mines are to be done properly, personnel performing such tasks must be properly trained. MSHA does not believe, however, that the qualifications required to perform this work in underground metal and nonmetal mines necessarily require the same level of training as for similar work in underground coal mines. Under the proposed rule, the training required would be that which is commensurate with the maintenance task involved. If examining and, if necessary, changing a filter or air cleaner is all that is required, a miner who has been shown how to do these tasks would be qualified by virtue of training or experience to do those tasks. For more detailed work, specialized training or additional experience would be required. Training by a manufacturer's representative, completion of a general diesel engine maintenance course, or practical experience performing such repairs could also serve as evidence of having the qualifications to perform the service.

In practice, the results will soon be revealed by performance. If MSHA finds a situation where maintenance appears to be shoddy, where the log indicates an engine has been in for repair with more frequency than should be required, or where repairs have damaged engine approval status or emission control effectiveness, MSHA would ask the operator to provide evidence that the person(s) who worked on the equipment was properly qualified by virtue of training or experience.

It is MSHA's intent that equipment sent off-site for maintenance and repair is also subject to the requirement that the personnel performing the repair be qualified by virtue of training or experience for the task involved. It is not MSHA's intent that a mine operator have to examine the training and experience record of off-site mechanics, but a mine operator will be expected to observe the same kind of caution as one would observe with a personal vehicle—e.g., selecting the proper kind of shop for the nature of the work involved, and considering prior direct experience with the quality of the shop's work.

Section 57.5067 Engines

The proposed rule would require that, with the exception of diesel engines used in ambulances and fire-fighting equipment, any diesel engines added to the fleet of an underground metal or nonmetal mine in the future must be an engine approved by MSHA under Part 7 or Part 36. This requirement would take effect 60 days after the date the rule is promulgated.

The composition of the existing fleet would not be impacted by this part of the proposed rule. However, after the rule's effective date, an operator would not be permitted to bring into underground areas of a mine an unapproved engine from the surface area of the same mine, an area of another mine, or from a non-mining operation. Promoting a gradual turnover of the existing fleet to better engines is an appropriate response to the health risk presented by dpm.

Approval is not something that has to be done by individual mine operators. Approved engines carry an approval plate so they are easy to distinguish. Approval is a process that is handled by engine manufacturers, involving tests by independent laboratories.

MSHA is assuming in the PREA accompanying this proposed rule that this additional requirement will require manufacturers to obtain approval on one additional diesel engine model per year. Some engines currently used in metal and nonmetal mines may have no approval criteria; in such cases, MSHA will work with the manufacturers to develop approval criteria consistent with those MSHA uses for other diesel engines. Based upon preliminary analysis, MSHA has tentatively concluded that any diesel engine meeting current on-highway and non-road EPA emission requirements would meet MSHA's engine approval standards of Part 7, subpart E, category B type engine. (See section 4 of Part II of this preamble for further information about these engines.)

Currently, the EPA non-road test cycle and MSHA's test cycle are the same for determining the gaseous and particulate emissions. MSHA envisions being able to use the EPA test data for engines run on the non-road test cycle for determining the gaseous ventilation rate and particulate index. The engine manufacturer would continue to submit the proper paper work for a specific model diesel engine to receive the MSHA approval. However, engine data run on the EPA on-highway transient test cycle would not as easily be usable to determine the gaseous ventilation and particulate index. Comments on how MSHA can facilitate review of engines not currently approved would be welcome.

Engines in diesel-powered ambulances and fire-fighting equipment would be exempted from these requirements. This exemption is identical with that in the rule for diesel-powered equipment in underground coal mines.

Section 57.5070 Miner Training

Proposed § 57.5070 would require any miner ''who can reasonably be expected to be exposed to diesel emissions'' be trained annually in: (a) The health risks associated with dpm exposure; (b) the methods used in the mine to control dpm concentrations; (c) identification of the personnel responsible for maintaining those controls; and (d) actions miners must take to ensure the controls operate as intended.

The purpose of the proposed requirement is to promote miner awareness. Exposure to diesel particulate is associated with a number of harmful effects as discussed in Part III of this preamble, and the safe level is unknown. Miners who work in mines where they are exposed to this risk ought to be reminded of the hazard often enough to make them active and committed partners in implementing actions that will reduce that risk.

The training need only be provided to miners who can reasonably be expected to be exposed at the mine. The training is to be provided by operators; hence, it is to be without fee to the miner.

The rule places no constraints on the operator as to how to accomplish this training. MSHA believes that the required training can be provided at minimal cost and minimal disruption. The proposal would not require any special qualifications for instructors, nor would it specify the hours of instruction.

Instruction could take place at safety meetings before the shift begins. Devoting one of those meetings to the topic of dpm would be a very easy way to convey the necessary information. Simply providing miners with a copy of MSHA's ''Toolbox'' and, a copy of the plan, if a control plan is in effect for the mine, and reviewing these documents, can cover several of the training requirements. One-on-one discussions that cover the required topics are another approach that can be used.

Operators could also choose to include a discussion on diesel emissions in their Part 48 training, provided the plan is approved by MSHA. There is no existing requirement that Part 48 training include a discussion of the hazards and control of diesel emissions. While mine operators are free to cover additional topics during the Part 48 training sessions, the topics that must be covered during the required time frame may make it impracticable to cover other matters within the prescribed time limits.

Where the time is available in mines using diesel-powered equipment, operators would be free to include the dpm instruction in their Part 48 training plans. The Agency does not believe special language in the proposed rule is required to permit this action under Part 48, but welcomes comment in this regard.

The proposal does not require the mine operator to separately certify the completion of the dpm training, but some evidence that the training took place would have to be produced upon request. A serial log with the employee's signature is an acceptable practice.

To assist mine operators with the proposed training requirement, it is MSHA's intent to develop an instruction outline that mine operators can use as a guide for training personnel. Instruction materials will be provided with the outline.

Section 57.5071 Environmental Monitoring

Operator's Monitoring Responsibility. Proposed § 57.5071(a) would require that mine operators sample their mine environments to evaluate environmental conditions to which miners are exposed. It is proposed that sampling be performed as often as necessary to ''effectively evaluate''—under conditions that can be reasonably anticipated in the mine—(1) Whether the dpm concentration in any area of the mine where miners normally work or travel exceeds the applicable limit; and (2) the average full shift airborne concentration at any position or on any person designated by the Secretary.

There are two important aspects of this proposed operator monitoring requirement. First, it would clarify that it is the responsibility of mine operators to be aware of the concentrations of dpm in all areas of the mine where miners normally work or travel, so as to know whether action is needed to ensure that the concentration is kept below the applicable limit. Secondly, this requirement would ensure special attention to locations or persons known to MSHA to have a significant potential for overexposure to dpm.

The obligation of operators to ''effectively evaluate'' concentrations in a mine is a separate obligation from that to keep dpm levels below the established limit, and can be the basis of a separate citation from MSHA. The proposed rule is performance-oriented in that the regularity and methodology used to make this evaluation are not specified. However, MSHA expects mine operators to sample with such frequency that they and the miners working at the mine site are aware of dpm levels in their work environment. In this regard, MSHA's own measurements will assist the Agency in verifying the effectiveness of an operator's monitoring program. If an operator is ''effectively evaluating'' the concentration of dpm at designated positions, for example, MSHA would not expect to regularly record concentrations above the limit when it samples at that location. If MSHA does find such a problem, it will investigate to determine how frequently an operator is sampling, where the operator is sampling, and what methodology is being used, so as to determine whether the obligation in this section is being fulfilled.

MSHA proposed a performance-oriented operator sampling requirement in its recent proposed rule on noise, and is seeking some consistency of approach in this regard for uniform health standards.

Operator Monitoring Methods. The proposed rule requires that full-shift diesel particulate concentrations be determined during periods of normal production or normal work activity, in areas where miners work or travel. The proposed rule does not specify a particular monitoring method or frequency; rather, the proposal is performance-oriented. Operators may, at their discretion, conduct their monitoring using the same sampling and analytical method as MSHA, or they may use any other method that enables that mine to ''effectively evaluate'' the concentrations of dpm. Monitoring performed to verify the effectiveness of a diesel particulate control plan would probably meet the obligation under proposed § 57.5071 if it is done with enough sufficiency to meet the obligation under proposed § 7.5062(c).

As discussed in connection with proposed § 57.5061, MSHA intends to use NIOSH Method 5040, the sampling and analytical method that NIOSH has developed for accurately determining the concentration of total carbon. Operators are also required to use the TC method for verifying the effectiveness of dpm control plans, as discussed in connection with proposed § 57.5062. But the method may not be necessary to effectively evaluate dpm in some mines. For example, dpm measurements in limestone, potash and salt mines could be determined using the RCD method, since there are no large carbonaceous particles present that would interfere with the analysis. Such estimates can be useful in determining the effectiveness of controls and where more refined measurements may be required.

Of course, mine operators using the RCD, or size-selective methods, to monitor their diesel particulate concentrations would have to convert the results to a TC equivalent to ascertain their exact compliance status. At the present time, MSHA has no conversion tables for this purpose. In most cases, the other methods will provide a good indication of whether controls are working and whether further action is required.

Part II of this preamble provides information on monitoring methods and their constraints, and on laboratory and sampler availability.

Observation of Monitoring. Section 103(c) of the Mine Act requires that:

> The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof.

In accordance with this legal requirement, proposed § 57.5071(b) requires a mining operator to provide affected miners and their representatives with an opportunity to observe exposure monitoring required by this section. Mine operators must give prior notice to affected miners and their representatives of the date and time of intended monitoring.

MSHA has proposed identical language in a supplement to its proposed rule on noise (62 FR 68468).

Corrective Action if Concentration is Exceeded. Proposed § 57.5071(c) provides that if any monitoring performed under this section indicates that the applicable dpm concentration limit has been exceeded, an operator shall initiate corrective action by the next work shift, promptly post a notice of the corrective action being taken and promptly complete such corrective action.

MSHA welcomes comments as to what guidance to provide with respect to the obligations in this regard where an operator is not using the total carbon method. MSHA also welcomes comment as to whether personal notice of corrective action would be more appropriate than posting, given the health risks involved.

The Agency wishes to emphasize that operator monitoring of dpm concentrations would not take the place of MSHA sampling for compliance purposes; rather, this requirement is

designed to ensure the operator checks dpm concentrations on a more regular basis than it is possible for MSHA to do.

Proposed paragraph (c) provides that if sampling results indicate the concentration limit has been exceeded in an area of a mine, an operator would initiate corrective action by the next work shift and promptly complete such action.

In certain types of cases (e.g., 30 CFR 75.323), MSHA has required that when monitoring detects a hazardous level of a substance, miners must be immediately withdrawn from an area until abatement action has been completed. Although MSHA has not proposed such action in this case, MSHA would like advice from the mining community on whether such a practice should be required in light of the evidence presented on the various risks posed by exposure to diesel particulate. There is good evidence, for example, that acute short-term increases in exposure can pose significant risks to miner health.

The Agency welcomes comment on whether clarification of this proposed requirement is necessary in light of the fact that operators using more complex analytical procedures (e.g., the total carbon method) may not receive the results for some time period after the sampling has taken place.

Posting of Sample Results. Proposed § 57.5071(d)(1) would require that monitoring results be posted on the mine bulletin board within 15 days of receipt, and remain posted for 30 days. A copy of the results would be provided to the authorized miners' representative. Posting of the results would ensure that miners are kept aware of the hazard so they can actively participate in efforts to control dpm.

Retention of Sample Results. Proposed § 57.5071(d)(2) would require that records of the sampling method and the sample results themselves be retained by operators for five years. This is because the results from a monitoring program can provide insight as to the effectiveness of controls over time and provide a history of occupational exposures at the mine. MSHA would welcome comment on the sample retention period appropriate for the risks involved.

Section 57.5075 Diesel Particulate Records

Various recordkeeping requirements are set forth in provisions of the proposed rule. For the convenience of the mining community, these requirements are also listed in a table entitled ''Diesel Particulate Recordkeeping Requirements,'' which can be found in proposed § 57.5075(a). Each row involves a record that must be kept. The section requiring the record be kept is noted, along with the retention time. MSHA would welcome input from the mining community as to whether it likes this approach or finds it duplicative or confusing.

Location of Records. Proposed § 57.5075(b)(1) would provide that any record which is required to be retained at the mine site may be retained elsewhere if it is immediately accessible from the mine site by electronic transmission. Compliance records need to be where an inspector can view them during the course of an inspection, as the information in the records may determine how the inspection proceeds. If the mine site has a fax machine or computer terminal, there is no reason why the records cannot be maintained elsewhere. MSHA's approach in this regard is consistent with Office of Management and Budget Circular A–130.

MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000.

Records Access. Proposed § 57.5075(b) also covers records access. Consistent with the statute, upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators are to promptly provide access to any record listed in the table in this section. A miner, former miner, or, with the miner's or former miner's written consent, a personal representative of a miner, is to have access to any exposure record required to be maintained pursuant to § 57.5071 to the extent the information pertains to the miner or former miner. Upon request, the operator must provide the first copy of such record at no cost. Whenever an operator ceases to do business, that operator would be required to transfer all records required to be maintained by this part to any successor operator.

General Effective Date. The proposed rule provides that unless otherwise specified, its provisions take effect 60 days after the date of promulgation of the final rule. Thus, for example, the requirements to implement certain work practice controls (e.g., fuel type) would go into effect 60 days after the final rule is published.

A number of provisions of the proposed rules contain separate effective dates that provide more time for technical support. For example, the initial concentration limit for underground metal and nonmetal mines would be delayed for 18 months.

A general outline of effective dates is contained in Question and Answer 10 in Part I of this preamble.

V. Adequacy of Protection and Feasibility of Proposed Rule

The Mine Act requires that in promulgating a standard, the Secretary, based on the best available evidence, shall attain the highest degree of health and safety protection for the miner with feasibility a consideration.

Overview

This part begins with a summary of the pertinent legal requirements, followed by a general profile of the economic health and prospects of the metal and nonmetal mining industry.

The discussion then turns to the proposed rule for underground metal and nonmetal mines. MSHA is proposing to establish a concentration limit for dpm, supplemented by monitoring and training requirements. An operator in the metal and nonmetal sector would have the flexibility to choose any type or combination of engineering controls to keep dpm levels at or below the concentration limit. In addition, the proposed rule would require this sector to implement certain work practices that help reduce dpm concentrations—practices similar to those already required in the underground coal mining industry. Miner hazard awareness training would also be required.

This part evaluates the proposed rule for underground metal and nonmetal mines to ascertain if, as required by the statute, it achieves the highest degree of protection for underground metal and nonmetal miners that is feasible, both technologically and economically, for underground metal and nonmetal mine operators to provide. Some significant alternatives to the proposed rule were also reviewed in this regard—for example, reducing the concentration limit or the time permitted to come into compliance with the limit. Based on the best evidence available to MSHA at this time, the Agency has tentatively concluded that the proposed rule for the underground metal and nonmetal sector meets the statutory requirements. The Agency has also tentatively concluded that the alternatives considered are not feasible for underground metal and nonmetal mine operators as a whole—for technological reasons, economic reasons, or both.

An Appendix to this part provides additional information about an approach to simulating the dpm reduction in mines that can be achieved

with various types of controls. Some simulations using this model were among the facts considered by MSHA in reaching its tentative conclusions about the feasible concentration limit in underground metal and nonmetal mines.

Pertinent Legal Requirements

Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act) states that MSHA's promulgation of health standards must:

* * * [A]dequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

The Mine Act also specifies that the Secretary of Labor (Secretary), in promulgating mandatory standards pertaining to toxic materials or harmful physical agents, base such standards upon:

* * * [R]esearch, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the miner, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the mandatory health or safety standard promulgated shall be expressed in terms of objective criteria and of the performance desired. [Section 101(a)(6)(A)].

Thus, the Mine Act requires that the Secretary, in promulgating a standard, based on the best available evidence, attain the highest degree of health and safety protection for the miner with feasibility a consideration.

In relation to feasibility, the legislative history of the Mine Act states that:

* * * This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeal have recognized, occupational safety and health statutes should be viewed as ''technology-forcing'' legislation, and a proposed health standard should not be rejected as infeasible when the necessary technology looms in today's horizon. *AFL-CIO* v. *Brennan,* 530 F.2d 109 (1975); *Society of the Plastics Industry* v. *OSHA,* 509 F.2d 1301, *cert. denied,* 427 U.S. 992 (1975).

Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

Court decisions have clarified the meaning of feasibility. The Supreme Court, in *American Textile Manufacturers' Institute* v. *Donovan* (OSHA Cotton Dust), 452 U.S. 490, 101 S. Ct. 2478 (1981), defined the word ''feasible'' as ''capable of being done, executed, or effected.'' The Court stated that a standard would not be considered economically feasible if an entire industry's competitive structure was threatened. According to the Court, the appropriate inquiry into a standard's economic feasibility is whether the standard is capable of being achieved.

Courts do not expect hard and precise predictions from agencies regarding feasibility. Congress intended for the ''arbitrary and capricious standard'' to be applied in judicial review of MSHA rulemaking (S.Rep. No. 95–181, at 21.) Under this standard, MSHA need only base its predictions on reasonable inferences drawn from the existing facts. MSHA is required to produce reasonable assessment of the likely range of costs that a new standard will have on an industry. The agency must also show that a reasonable probability exists that the typical firm in an industry will be able to develop and install controls that will meet the standard. See, *Citizens to Preserve Overton Park* v. *Volpe,* 401 U.S. 402, 91 S. Ct. 814 (1971); *Baltimore Gas & Electric Co.* v. *NRDC,* 462 U.S. 87 103 S. Ct. 2246, (1983); *Motor Vehicle Manufacturers Assn.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 103 S. Ct. 2856 (1983); *International Ladies' Garment Workers' Union* v. *Donovan,* 722 F.2d 795, 232 U.S. App. D.C. 309 (1983), *cert. denied,* 469 U.S. 820 (1984); *Bowen* v. *American Hospital Assn.,* 476 U.S. 610, 106 S. Ct. 2101 (1986).

In developing a health standard, MSHA must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *United Steelworkers of America* v. *Marshall,* 647 F.2d 1189, (D.C. Cir. 1980) at 1272. If only the most technologically advanced companies in an industry are capable of meeting the standard, then that would be sufficient demonstration of feasibility (this would be true even if only some of the operations met the standard for some of the time). *American Iron and Steel Institute* v. *OSHA,* 577 F. 2d 825, (3d Cir. 1978); see also, *Industrial Union Department, AFL-CIO* v. *Hodgson,* 499 F. 2d 467 (1974).

Industry profile. The industry profile provides background information describing the structure and economic characteristics of the metal and nonmetal mining industry. This information was considered by MSHA as appropriate in reaching tentative conclusions about the economic feasibility of various regulatory alternatives. MSHA welcomes the submission of additional economic information about the metal and nonmetal mining industry, and about underground mining in particular, that will help it make final determinations about the economic feasibility of the proposed rule.

This profile provides data on the number of mines, their size, the number of employees in each segment, as well as selected market characteristics. It does not provide information about the use of diesel engines in the industry; information in that regard was provided in the first section of part II of this preamble.

Overall mining industry. MSHA divides the mining industry into two major segments based on commodity: The coal industry and the metal and nonmetal (M/NM) mining industry. These major industry segments are further divided based on type of operations (underground mines, surface mines, and independent mills, plants, shops, and yards). MSHA maintains its own data on mine type, size, and employment. MSHA also collects data on the number of contractors and contractor employees.

MSHA categorizes mines as to size based on employment. Over the past 20 years, for rulemaking purposes, MSHA has consistently defined small mines to be those having fewer than 20 employees and large mines to be those having at least 20 employees. For this Preliminary Regulatory Economic Analysis and Initial Regulatory Flexibility Analysis, MSHA will continue to use this small mine definition. However, for the purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act (RFA), MSHA has also included SBA's definition of small (500 or fewer employees) in the evaluation of impacts.

Table V–1 presents the number of small and large M/NM mines and the corresponding number of miners, excluding contractors, by major industry segment and mine type. Table V–1 uses three size classes: Less than 20 employees (MSHA's definition of small), 20 to 500 employees (also small by SBA's definition, but not by MSHA's), and over 500 employees. Table V–2 presents similar MSHA data on the numbers of independent contractors and the corresponding numbers of employees by the size of the operation, based on employment. Table V–3 shows numbers of M/NM mines and workers by class of commodity produced.

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Table V-1: Distribution of Operations and Employment (excluding contractors) by Mine Type and Size

Mine Type	Size of M/NM Mine						All M/NM Mines	
	Less than 20 Employees		20 to 500* Employees		Over 500* Employees			
	Mines	Miners	Mines	Miners	Mines	Miners	Mines	Miners
Under-ground	130	1,103	124	10,152	7	6,531	261	17,786
Surface	8,781	48,924	1,175	63,753	18	16,723	9,974	129,400
Shop/Yd/ Mill/Plt	284	2,195	212	15,792	4	2,584	500	20,571
Office Workers	-	8,422	-	16,244	-	2,389	-	27,055
Total M/NM	9,195	60,644	1,511	105,941	29	28,227	10,735	194,812

(*) Based on MSHA's traditional definition, large mines include all mines with employees of 20 or greater.

Source: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on preliminary 1996 MIS data (quarter 1 - quarter 4, 1996).

Table V-2: Distribution of Contractors and Contractor Employment by Size of Operation

Contractors	Size of Contractor						All Contractors	
	Less than 20 Employees		20 to 500* Employees		Over 500* Employees			
	Mines	Miners	Mines	Miners	Mines	Miners	Mines	Miners
Firms	2,621	13,058	340	18,810	1	897	2,962	32,765
Office Workers	-	691	-	902	-	140	-	1,733
Total Contractors	2,621	13,749	340	19,712	1	1,037	2,962	34,498

(*) Based on MSHA's traditional definition, large contractors include all contractors with employees of 20 or greater.

Source: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on preliminary 1996 MIS data (quarter 1 - quarter 4, 1996).

Table V-3: Estimated Distribution of Metal and Nonmetal Mines and Miners by Commodity and Size Category

Commodity	Size of M/NM Mine						All M/NM Mines	
	Less than 20 Employees		20 to 500* Employees		Over 500* Employees			
	Mines	Workers	Mines	Workers	Mines	Workers	Mines	Workers
Metal	175	1,191	167	21,944	25	24,417	367	47,552
Non-Metal	542	3,471	225	21,685	4	3,810	771	28,966
Stone	2,619	22,838	889	53,413	0	0	3,508	76,251
Sand/ Gravel	5,859	33,144	230	8,899	0	0	6,089	42,043
Total	9,195	60,644	1,511	105,941	29	28,227	10,735	194,812

(*) Based on MSHA's traditional definition, large mines include all mines with employees of 20 or greater.

Source: MSHA's Office of Standards, Regulations, and Variances. Employment figures includes office workers.

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Underground M/NM Mines That Use Diesel Powered Equipment

Impacted Mines by Size. A January 1998 count of diesel powered equipment performed by MSHA's Metal and Nonmetal inspectors shows that 203 of the 261 underground M/NM mines (about 78 percent) regularly use diesel powered equipment. Table V–4 shows the 203 underground M/NM mines that use diesel powered equipment, by size and subsector.

Based on MSHA's traditional definition of a small mine (fewer than 20 employees), Table V–4 shows that of the 203 underground M/NM mines, 82 mines (40 percent) are small mines and 121 mines (60 percent) are large mines. Small mines employ about 4 percent of the workforce (849 employees), while large mines employ about 96 percent of the workforce (18,073 employees).

Based on SBA's definition of a small mine (500 or fewer employees), 196 mines (97 percent) are considered small and 7 mines (3 percent) are large. Under this definition, small mines employ 65 percent of the workforce (12,391 employees), while large mines employ 35 percent of the workforce (6,531 employees).

Impacted Mines by Commodity. The M/NM mining industry consists of about 70 different commodities that can be classified into four commodity categories: Metals, nonmetals, stone, and sand and gravel. Some examples of metals mines are gold, silver, and copper, while some examples of nonmetals mines are potash, salt, and trona. Examples of stone mines are limestone, marble, and granite. Table V–4 also presents the numbers of underground mines operators by these four categories.

Table V-4: Number of Underground Metal and Nonmetal Mines and Miners that Use Diesel Powered Equipment by Commodity and Size Category

Commodity	Size of Underground M/NM Mine						Underground M/NM Mines That Use Diesel Equip.	
	Less than 20 Employees		20 to 500* Employees		Over 500* Employees			
	Mines	Workers	Mines	Workers	Mines	Workers	Mines	Workers
Metal	15	103	44	4,691	4	2,517	63	7,311
Non-Metal	15	100	29	4,645	3	4,014	47	8,759
Stone	52	646	41	2,206	0	0	93	2,852
Sand/ Gravel	0	0	0	0	0	0	0	0
Total	82	849	114	11,542	7	6,531	203	18,922

(*) Based on MSHA's traditional definition, large mines include all mines with employees of 20 or greater.

Source: MSHA's Metal and Nonmetal inspectors count of underground Metal and Nonmetal mines that use diesel powered equipment. Includes office workers.

There are no underground mine operators using diesel powered equipment that are classified as sand or gravel. A substantial portion of such small underground mine operators, however, are classified as stone, using either MSHA's definition or SBA's definition of a small mine. Large underground mine operators that use diesel powered equipment are predominantly classified as metal or nonmetal. By MSHA's definition of a large mine (those that employ 20 or more), two thirds (66 percent) of large mines are classified as metal or nonmetal. With respect to SBA's definition of a large mine (those that employ over 500), all large underground mine operators that use diesel powered equipment are classified as either metal or nonmetal.

Structure of Underground M/NM Mining Subsectors

Metal mining. Metal mining in the U.S. consists of about 25 different commodities. Most metal commodities include only one or two mining operations. As is shown in Table V–3, metal mining operations represent 3 percent of the M/NM mines; employ 24 percent of the M/NM miners; and account for 33 percent of the value of M/NM mineral produced in the U.S. (U.S. Geological Survey, 1997, p. 6). By MSHA's definition, 48 percent of the metal mining operations are small. Among underground M/NM mines using diesel powered equipment, Table V–4 shows that metal mining operations represent 31 percent of mines and 39 percent of miners, and (by MSHA's definition) 24 percent are small.

Underground metal mining uses a few basic mining methods, such as stope, room and pillar, and block caving. Larger underground metal mines use more hydraulic drills and track-mounted haulage, whereas smaller underground metal mines use more hand-held pneumatic drills.

Nonmetal Mining (Excluding Stone, Sand and Gravel). For enforcement and statistical purposes, MSHA separates stone mining and sand and gravel mining from other nonmetal mining. There are about 35 different nonmetal commodities, not including stone or sand and gravel. Overall (Table V–3), nonmetal mining operations represent 7 percent of the M/NM mines; employ 15 percent of the M/NM miners; and account for 35 percent of the value of M/NM mineral produced in the U.S. (Ibid., p. 160, 162). By MSHA's definition, 70 percent of the nonmetal mining operations are small. Among underground M/NM mines using diesel powered equipment, Table V–4 shows that nonmetal mining operations represent 23 percent of mines and 46 percent of miners, and (by MSHA's definition) 32 percent are small.

Nonmetal mining uses a wide variety of underground mining methods. For example, potash mines use continuous miners similar to coal mining; oil shale uses in-situ retorting; and gilsonite uses hand-held pneumatic chippers. Some nonmetal commodities use kilns and dryers in ore processing. Others use crushers and mills similar to metal mining. Underground nonmetal mining operations generally use more block caving, room and pillar, and retreat mining methods; less hand-held equipment; and more electrical equipment than metal mining operations.

Stone Mining. There are basically only 8 different stone commodities, of which 7 are further classified as either dimension stone or crushed and broken

stone. Overall, stone mining operations represent 33 percent of all M/NM mines; employ 39 percent of the M/NM miners; and account for 19 percent of the value of M/NM mineral produced in the U.S. By MSHA's definition, 75 percent of the stone mining operations are small. Among underground M/NM mines using diesel powered equipment, stone mining operations represent 46 percent of mines and 15 percent of miners, and (by MSHA's definition) 56 percent are small.

Sand and Gravel Mining. Although 57 percent of all M/NM mines are sand and gravel operations, these are all surface mines. No sand and gravel mines will be affected by this regulation.

Economic Characteristics of the M/NM Mining Industry

Overview. The 1996 value of all M/NM mining output was $38 billion (Ibid., p. 6). Metal mining, which includes metals such as aluminum, copper, gold, and iron, contributed $12.5 billion to this total. Nonmetal mining, which includes commodities such as clay, phosphate rock, salt, and soda ash, was valued at $13.3 million. Stone mining contributed $7.4 billion, and sand and gravel contributed $4.8 billion to this total.

The entire M/NM mining industry is markedly diverse, not only in terms of the breadth of minerals but also in terms of each commodity's usage. For example, metals such as iron and aluminum are used to produce vehicles and other heavy duty equipment, as well as consumer goods such as household equipment and beverage cans. Other metals, such as uranium and titanium, have limited uses. Nonmetals like cement are used in construction, while salt is used in a variety of ways, including as a food additive and highway deicing. Soda ash, phosphate rock, and potash also have various commercial uses. Stone and sand and gravel are used in numerous industries including the construction of roads and buildings.

A detailed financial picture of the M/NM mining industry is difficult to develop because most mines either are privately held corporations or sole proprietorships or they are subsidiaries of publicly owned companies. Privately held corporations and sole proprietorships do not make their financial data available to the public; parent companies are not required to separate financial data for subsidiaries in their reports to the Securities and Exchange Commission. As a result, financial data are available for only a few M/NM companies, and these data are not representative of the entire industry. Each commodity has a unique market demand structure. The following discussion focuses on market forces on a few specific commodities of the M/NM industry.

Metal Mining. Historically, the value of metals production has exhibited considerable instability. In the early 1980's, excess capacity, large inventories, and weak demand depressed the international market for metals, while the strong dollar placed U.S. producers at a competitive disadvantage with foreign producers. Reacting to this, many metal mining companies reduced work forces, eliminated marginal facilities, sold non-core businesses, and restructured. At the same time, new mining technologies were developed, and wage increases were restrained. As a result, the metal mining firms now operating are more efficient and have lower break-even prices than those that operated in the 1970's.

Variations in the prices for iron and alloying metals, such as nickel, aluminum, molybdenum, vanadium, platinum, and lead, coincide closely with fluctuations in the market for durable goods, such as vehicles and heavy duty equipment. As a result, the market for these metals is cyclical in nature and is impacted directly by changes in aggregate demand and the economy in general. Both nickel and aluminum have experienced strong price fluctuations over the past few years. With the U.S. and world economies improving, however, demand for such alloys is improving, and prices have begun to recover. It must be noted that primary production of aluminum will continue to be impacted by the push to recycle.

The U.S. market for copper and precious metals, such as gold and silver, is uncertain, which makes consistent production growth in such areas difficult. U.S. gold production in 1996 was estimated at slightly above 1995 levels, which maintains the U.S. position as the world's second largest gold producing nation, after South Africa. U.S. silver production in 1996 increased slightly from 1995 levels to equal the highest production since 1992. U.S. copper production in 1996 continued its modest upward trend, rising to 1.9 million metric tons (Ibid, p. 52).

Overall, the 1996 production from all metal mining is estimated to decrease by about 10 percent from 1995 levels; 1996 estimates put capacity utilization at 84 percent (Ibid., p. 6). MSHA expects that the net result for the metal mining industry may be reduced demand but sustained prices.

Nonmetal Mining. Major commodities in the nonmetal category include salt, clay, phosphate rock, and soda ash. Market demand for these products tends not to vary greatly with fluctuations in aggregate demand. Stone is the leading revenue generator. The U.S. is the largest producer of soda ash and salt. In 1996, the U.S. produced 10.1 million metric tons of soda ash, valued at $778 million, and 40.1 million metric tons of salt, valued at $930 million (Ibid., p. 143). Soda ash is used in the production of glass, soap, detergents, paper, and food. Salt is used in highway deicing, food production, feedstock, and the chemical industry. Phosphate rock is used primarily to manufacture fertilizer. Approximately 42.5 million metric tons of phosphate rock, valued at $900 million, was produced in the U.S. in 1996 (Ibid., p. 124). The remaining nonmetal commodities, which include boron fluorspar, oil shale, and other minerals, are typically produced by a small number of mining operations.

Stone production includes granite, limestone, marble, slate, and other forms of crushed and broken or dimension stone. Sand and gravel products and stone products, including cement, have a cyclical demand structure. As a recession intensifies, demand for these products sharply decreases. Demand for stone, particularly cement, is expected to grow by as much as 3.0 percent, and demand for sand and gravel is expected to grow by as much as 1.2 percent (Ibid., p. 145).

Overall, the 1996 production from nonmetal mining was estimated to increase by 4.5 percent from 1995 levels; 1996 estimates put capacity utilization for stone and earth minerals at about 91 percent (Ibid., p. 6). The net result for the nonmetal mining industry may be higher demand for stone and various other commodities, as well as increased prices.

Adequacy of Miner Protection Provided by Proposed Rule in Underground Metal and Nonmetal Mines. In evaluating the proposed rule, it should be remembered that MSHA has measured dpm concentrations in this sector as high as $5{,}570_{DPM}$ $\mu g/m^3$—a mean of 830_{DPM} $\mu g/m^3$. See Table III–1 and Figure III–2 in part III of the preamble. As discussed in detail in part III of the preamble, these concentrations place underground metal and nonmetal miners at significant risk of material impairment of their health, and it does not appear there is any lower boundary to the risk. Accordingly, in accordance with the statute, the Agency has to set a standard which reduces these concentrations as much as is both

technologically and economically feasible for this sector as a whole.

In this sector, the Agency is proposing a concentration limit on dpm. The proposed concentration limit would be expressed in terms of a restriction on the amount of total carbon because of the measurement system which MSHA proposes to utilize. The proposed limit is 160_{TC} μg/m³—the equivalent of 200_{DPM} μg/m³. This permits concentrations of diesel particulate matter in this sector above those which MSHA hopes to achieve in the underground coal sector with the use of 95% particulate filter technology, as described earlier in this part.

Accordingly, the Agency has explored some significant alternatives to the proposal to ascertain if additional protection can feasibly be provided in this sector.

(1) *Establish a lower concentration limit for underground metal/nonmetal mines.* Based on the Agency's risk assessment, a lower concentration limit would provide more miner protection. The Agency has tentatively concluded, however, that at this time it may not be feasible for the underground metal and nonmetal sector to reach a concentration limit below that proposed. The evidence on this point is somewhat mixed, and comments and specific examples to illustrate them would be most welcome.

Technological feasibility of lower limit. In evaluating whether a lower concentration limit is feasible for this sector, MSHA has considered some examples of real-world situations. As described in more detail in the Appendix to this part, MSHA has developed a simulator or model to estimate the ambient dpm that would remain in a mine section after the application of a particular combination of control technologies. The model uses a spreadsheet template into which data can be entered; the formulae in the spreadsheet (described in the Appendix) instantly make the calculations and display the results. This model is hereinafter referred to as ''The Estimator''.

The examples presented here are based on data from several underground metal and nonmetal mines. The first three have been written up in detail and placed into MSHA's record, with actual mine identifiers removed; the fourth is based on information supplied by inspectors, and all available data is presented here. MSHA had picked these mines because the Agency originally thought the conditions there were such that these mines would have great difficulty in controlling dpm concentrations, but this turned out to not always be the case.

FIGURE V–1.—WORK PLACE EMISSIONS CONTROL ESTIMATOR

[Mine Name: Underground Nonmetal Mine A]

	Column A
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m³)	760 μg/m³
2. VEHICLE EMISSION DATA	
EMISSIONS OUTPUT (gm/hp-hr)	
VEHICLE 1 INDIRECT INJECTION 0.3–0.5 gm/hp-hr FEL	0.3 gm/hp-hr
VEHICLE 2 OLD DIRECT INJECTION 0.5–0.9 gm/hp-hr SCALER	0.3 gm/hp-hr
VEHICLE 3 NEW DIRECT INJECTION 0.1–0.4 gm/hp-hr DRILL	0.3 gm/hp-hr
VEHICLE 4 BOLTER	0.7 gm/hp-hr
VEHICLE OPERATING TIME (hours)	
VEHICLE 1 FEL	6 hours
VEHICLE 2 SCALER	6 hours
VEHICLE 3 DRILL	6 hours
VEHICLE 4 BOLTER	6 hours
VEHICLE HORSEPOWER (hp)	
VEHICLE 1 3 @ 480 FEL	1440 hp
VEHICLE 2 2 @ 250 SCALER	500 hp
VEHICLE 3 2 @ 250 DRILL	500 hp
VEHICLE 4 2 @ 82 BOLTER	164 hp
SHIFT DURATION (hours)	8 hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)	0.13 gm/hp-hr
3. MINE VENTILATION DATA	
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION	50 μg/m³
SECTION AIR QUANTITY	209000 cfm
AIRFLOW PER HORSEPOWER	80 cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS	
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY	
ADJUSTED SECTION AIR QUANTITY	330000 cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)	0.63
AIRFLOW PER HORSEPOWER	127 cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)	
VEHICLE 1	0%
VEHICLE 2 IF USED ENTER 0–20%	0%
VEHICLE 3	0%
VEHICLE 4	0%
NEW ENGINE EMISSION RATE (gm/hp-hr)	
VEHICLE 1	0.1 gm/hp-hr
VEHICLE 2 ENTER NEW ENGINE EMISSION (gm/hp-hr)	0.1 gm/hp-hr
VEHICLE 3	0.1 gm/hp-hr
VEHICLE 4	0.1 gm/hp-hr
AFTERFILTER OR CAB EFFICIENCY (%)	
VEHICLE 1	0%
VEHICLE 2 USE 65–95% FOR AFTERFILTERS	0%
VEHICLE 3 USE 50–80% FOR CABS	0%
VEHICLE 4	0%

FIGURE V–1.—WORK PLACE EMISSIONS CONTROL ESTIMATOR—Continued

[Mine Name: Underground Nonmetal Mine A]

	Column A
6. ESTIMATED FULL SHIFT DP CONCENTRATION	194 μg/m³

The mining community is encouraged to obtain a copy of the Estimator from MSHA and run simulations of its own in individual mines. MSHA would welcome having such examples submitted for the record as part of comments submitted on this proposed rulemaking.

The first example, summarized in Figure V–1, involves a section of an underground salt mine. This section has 9 diesel engines, most of them very heavy duty: three front end loaders of 480 hp each, 2 scalers and 2 drills at 250hp each, and an 82 hp bolter.

Entered in section 1 of the figure is the measured level of dpm, 760_{DPM} μg/m³. This measurement reflects the fact that the equipment was all equipped with oxidation catalytic converters; otherwise, the measurement would have been on the order of 20% higher.

Entered in sections 2 and 3 is information about the engines, operating cycle, horsepower, shift duration, intake dpm concentration, and ventilation currently used in the mine. The entries for engines of a similar type and horsepower were combined. The intake concentration is dpm coming from outside the section, and in the case of these examples has been estimated to be about 50_{DPM} μg/m³. This information is retained by the Estimator as a baseline against which to compare a particular combination of proposed controls.

Sections 2 and 3 of the Estimator also calculate two ratios — the average total shift particulate output, and the airflow per horsepower—that provide useful insights into what controls might be available. For example, in this case, an airflow of 80 cfm/hp is below recommended levels, suggesting that a ventilation increase should be part of the solution to the high dpm concentrations.

The controls to be modeled are entered into section 5 of the Estimator. In this example, the ventilation is increased enough to increase the airflow per horsepower to 127 cfm/hp. Oxidation catalytic converters are already on the equipment, so nothing can be added in that regard. In the example, all 9 engines (grouped into 4 lines by combining those with similar horsepower, as originally entered) would be replaced by newer engines with lower emission rates. No filters or cabs would be used. The calculated result is an ambient dpm concentration of 194_{DPM} μg/m³.

This mine section could actually lower its dpm concentrations more using different combinations of controls. For example, using 80% filters on the three front-end loaders instead of new engines would, according to the Estimator, result in an ambient dpm level of 161_{DPM} μg/m³. If both the 80% filters and new engines were used, the ambient dpm level would be 128_{DPM} μg/m³. Keep in mind that of the amount that remains, 50_{DPM} μg/m³ comes from the intake to the section. The next two studies are of an underground limestone mine that operates in two shifts: one for production, and one for support.

Figure V–2.—Work Place Emissions Control Estimator

[Mine Name: Underground Nonmetal Mine B Production Shift]

	Column A
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m³	330 μg/m³
2. VEHICLE EMISSION DATA	
EMISSIONS OUTPUT (gm/hp-hr)	
VEHICLE 1 INDIRECT INJECTION 0.3–0.5 gm/hp-hr FEL	0.1 gm/hp-hr
VEHICLE 2 OLD DIRECT INJECTION 0.5–0.9 gm/hp-hr Truck 1	0.2 gm/hp-hr
VEHICLE 3 NEW DIRECT INJECTION 0.1–0.4 gm/hp-hr Truck 2	0.1 gm/hp-hr
VEHICLE 4	0.0 gm/hp-hr
VEHICLE OPERATING TIME (hours)	
VEHICLE 1 FEL	9 hours
VEHICLE 2 Truck 1	9 hours
VEHICLE 3 Truck 2	9 hours
VEHICLE 4	0 hours
VEHICLE HORSEPOWER (hp)	
VEHICLE 1 FEL	315 hp
VEHICLE 2 Truck 1	250 hp
VEHICLE 3 Truck 2	330 hp
VEHICLE 4	0 hp
SHIFT DURATION (hours)	10 hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)	0.09 gm/hp-hr
3. MINE VENTILATION DATA	
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION	50 μg/m³
SECTION AIR QUANTITY	155000 cfm
AIRFLOW PER HORSEPOWER	173 cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS	
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY	

Figure V–2.—Work Place Emissions Control Estimator—Continued

[Mine Name: Underground Nonmetal Mine B Production Shift]

	Column A
ADJUSTED SECTION AIR QUANTITY	155000 cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)	1.00
AIRFLOW PER HORSEPOWER	173 cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)	
VEHICLE 1	0%
VEHICLE 2 IF USED ENTER 0–20%	0%
VEHICLE 3	0%
VEHICLE 4	0%
NEW ENGINE EMISSION RATE (gm/hp-hr)	
VEHICLE 1	0.1 gm/hp-hr
VEHICLE 2 ENTER NEW ENGINE EMISSION (gm/hp-hr)	0.2 gm/hp-hr
VEHICLE 3	0.1 gm/hp-hr
VEHICLE 4	0.0 gm/hp-hr
AFTERFILTER OR CAB EFFICIENCY (%)	
VEHICLE 1 CABS	70%
VEHICLE 2 USE 65–95% FOR AFTERFILTERS	70%
VEHICLE 3 USE 50–80% FOR CABS	70%
VEHICLE 4	0%
6. ESTIMATED FULL SHIFT DP CONCENTRATION	134 μg/m³

Figure V–3.—Work Place Emissions Control Estimator

[Mine Name: Underground Nonmetal Mine B Support Shift]

	Column A
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)	600 μg/m³
2. VEHICLE EMISSION DATA	
EMISSIONS OUTPUT (gm/hp-hr)	
VEHICLE 1 INDIRECT INJECTION 0.3–0.5 gm/hp-hr Drill	0.3 gm/hp-hr
VEHICLE 2 OLD DIRECT INJECTION 0.5–0.9 gm/hp-hr Bolter	0.6 gm/hp-hr
VEHICLE 3 NEW DIRECT INJECTION 0.1–0.4 gm/hp-hr Scaler	0.7 gm/hp-hr
VEHICLE 4 Anfo	0.7 gm/hp-hr
VEHICLE OPERATING TIME (hours)	
VEHICLE 1 Drill	8 hours
VEHICLE 2 Bolter	4 hours
VEHICLE 3 Scaler	8 hours
VEHICLE 4 Anfo	4 hours
VEHICLE HORSEPOWER (hp)	
VEHICLE 1 Drill	116 hp
VEHICLE 2 Bolter	193 hp
VEHICLE 3 Scaler	119 hp
VEHICLE 4 Anfo	86 hp
SHIFT DURATION (hours)	8 hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)	0.39 gm/hp-hr
3. MINE VENTILATION DATA	
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION	50 μg/m³
SECTION AIR QUANTITY	155000 cfm
AIRFLOW PER HORSEPOWER	302 cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS	
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY	
ADJUSTED SECTION AIR QUANTITY	155000 cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)	1.00
AIRFLOW PER HORSEPOWER	302 cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)	
VEHICLE 1	0%
VEHICLE 2 IF USED ENTER 0–20%	0%
VEHICLE 3	0%
VEHICLE 4	0%
NEW ENGINE EMISSION RATE (gm/hp-hr)	
VEHICLE 1	0.3 gm/hp-hr
VEHICLE 2 ENTER NEW ENGINE EMISSION (gm/hp-hr)	0.6 gm/hp-hr
VEHICLE 3	0.7 gm/hp-hr
VEHICLE 4	0.7 gm/hp-hr
AFTERFILTER OR CAB EFFICIENCY (%)	
VEHICLE 1	80%

Figure V–3.—Work Place Emissions Control Estimator—Continued

[Mine Name: Underground Nonmetal Mine B Support Shift]

	Column A
VEHICLE 2 USE 65–95% FOR AFTERFILTERS	80%
VEHICLE 3 USE 50–80% FOR CABS	80%
VEHICLE 4	80%
6. ESTIMATED FULL SHIFT DP CONCENTRATION	160 μg/m3

The two shifts use completely different types of diesel-powered equipment.

Figure V–2 summarizes the study of the production shift, and Figure V–3 summarizes the study of the support shift.

The production shift already has low-emission engines on the three pieces of equipment present—a front-end loader and two trucks, as well as oxidation catalytic converters on each engine.

Its ventilation provides 173 cfm/hp. Accordingly, the measured dpm for this shift is only about 330_{DPM} μg/m^3 With the addition of a cab on each unit providing roughly 70% effectiveness (see part II of this preamble on cab effectiveness), the ambient concentration (to which the equipment operator would be exposed) can be reduced to 134_{DPM} μg/m^3.

In the case of the support shift, the engines do emit particulate at a high rate; but they all are low horsepower engines, and all have oxidation catalytic converters. The ventilation is the same as on the production shift. Hence the measured dpm is on the order of 600_{DPM} μg/m^3. In the example shown, 80% filtration of each piece of equipment would bring the concentration down to 160_{TC} μg/m^3. If 95% filters were used, the Estimator indicates this concentration could be reduced to 77_{DPM} μg/m^3. Since 50_{DPM} μg/m^3 of this is the estimated intake into the section, the filters and controls already in place appear to be capable of eliminating almost all dpm generated within the section itself.

FIGURE V–4.—WORK PLACE EMISSIONS CONTROLS ESTIMATOR

[Mine Name: Underground Gold Mine]

	Column A
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (ug/m3)	1000 us/m^3
2. VEHICLE EMISSION DATA	
EMISSIONS OUTPUT (gm/hp-hr)	
VEHICLE 1 INDIRECT INJECTION 0.3–0.5 gm/hp-hr FEL	0.7 gm/hp-hr
VEHICLE 2 OLD DIRECT INJECTION 0.5–0.9 gm/hp-hr Scaler	0.7 gm/hp-hr
VEHICLE 3 NEW DIRECT INJECTION 0.1–0.4 gm/hp-hr Drill	0.7 gm/hp-hr
VEHICLE 4	0.0 gm/hp-hr
VEHICLE OPERATING TIME (hours)	
VEHICLE 1 FEL	6 hours
VEHICLE 2 Scaler	6 hours
VEHICLE 3 Drill	6 hours
VEHICLE 4	0 hours
VEHICLE HORSEPOWER (hp)	
VEHICLE 1 FEL	315 hp
VEHICLE 2 Scaler	250 hp
VEHICLE 3 Drill	330 hp
VEHICLE 4	0 hp
SHIFT DURATION (hours)	8 hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)	0.44 gm/hr-hr
3. MINE VENTILATION DATA	
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION	50 ug/m^3
SECTION AIR QUALITY	185000 cfm
AIRFLOW PER HORSEPOWER	207 cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS	
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY	
ADJUSTED SECTION AIR QUANTITY	185000 cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)	1.00
AIRFLOW PER HORSEPOWER	207 cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)	
VEHICLE 1	20%
VEHICLE 2 IF USED ENTER 0–20%	20%
VEHICLE 3	20%
VEHICLE 4	0%
NEW ENGINE EMISSION RATE (gm/hp-hr)	
VEHICLE 1	0.7 gm/hp-hr
VEHICLE 2 ENTER NEW ENGINE EMISSION (gm/hp-hr)	0.1 gm/hp-hr
VEHICLE 3	0.1 gm/hp-hr
VEHICLE 4	0.0 gm/hp-hr

FIGURE V–4.—WORK PLACE EMISSIONS CONTROLS ESTIMATOR—Continued

[Mine Name: Underground Gold Mine]

	Column A
AFTERFILTER OR CAB EFFICIENCY (%)	
VEHICLE 1 FILTER	95%
VEHICLE 2 USE 65–95% FOR AFTERFILTERS	0%
VEHICLE 3 USE 50–80% FOR CABS	0%
VEHICLE 4	0%
6. ESTIMATED FULL SHIFT DP CONCENTRATION	134 ug/m^3

The final study, summarized in Figure V–4, involves a multi-level underground gold mine. Each level had one production unit on a separate split of ventilation air. The three engines are large and have a high emission rate, and have no oxidation catalytic converters. The ventilation produces over 200 cfm/hp. In this case, no initial measurement was taken; instead, an initial concentration of 1000_{DPM} μg/m^3 was estimated by taking a percentage of the respirable dust concentration (a method discussed in the Appendix).

By replacing all of the current engines with low-emission engines equipped with catalytic converters, the Estimator calculates that the ambient concentration can be reduced to 159_{DPM} μg/m^3, of which 50_{DPM} μg/m^3 again constitutes the estimated intake to the section. Further reductions could be achieved by adding a filter to the front-end loader and/or drill.

These studies seem to suggest that using a combination of available technologies, even mine sections with significant ambient intake and standard ventilation parameters can reduce dpm concentrations well below the proposed concentration limit.

Economic feasibility of lower concentration limit. MSHA's cost estimates for the proposed concentration limit of 200_{DPM} μg/m^3 for underground metal and nonmetal mines comes to about $19.2 million a year. (See Table I–1, in the response to Question 5 in part I of the preamble). For an average underground metal and nonmetal dieselized mine that uses diesel powered equipment, this amounts to about $94,600 per year to comply with the proposed concentration limits.

The assumptions used in preparing the cost estimates are discussed in detail in the Agency's PREA, and are based on a January 1998 count of diesel powered equipment that regularly operates in the underground metal and nonmetal mines. The count was performed by MSHA's metal and nonmetal inspectors. The assumptions can be summarized as follows: engineering controls, such as low emission engines, ceramic filters, oxidation catalytic converters, and cabs would be needed on certain diesel powered equipment. Most of the engineering controls would be needed on diesel powered equipment used for production, while a small amount of diesel powered equipment that is used for support purposes would need engineering controls. In addition to these controls, MSHA assumed that some underground metal and nonmetal mines would need to make ventilation changes in order to meet the proposed concentration limits.

While the four studies presented here suggest it might be economically feasible for some mines in this sector to reduce dpm concentrations below the concentration level proposed, the Agency is reluctant to conclude on the basis of the examples that most underground metal and nonmetal operators would find it economically feasible to reduce concentrations below the proposed limit of 160_{TC} μg/m^3 (200_{DPM} μg/m^3). The Agency welcomes additional examples and information it can use to make a better assessment of the costs operators would incur to reduce dpm to various concentration limits, as well as other considerations relevant to economic feasibility.

(2) *Shorten the phase-in time to reach the final concentration limit in underground metal/nonmetal mines.* Under the proposed rule, there is a phase-in period for a dpm concentration limit (see proposed § 57.5060). Operators would have 18 months to reduce dpm concentrations in areas of the mine where miners work or travel to 400_{TC} μg/m^3 (500_{DPM} μg/m^3), and up to 60 months in all to reduce dpm concentrations in those areas to 160_{TC} μg/m^3 (200_{DPM} μg/m^3). MSHA established this phase-in period because it has tentatively concluded that it would be infeasible for the underground metal and nonmetal mining industry as a whole to implement the requirements sooner.

With respect to technological feasibility, MSHA notes that many of these mines face unique difficulties in using ventilation to lower dpm concentrations; and high efficiency particulate filters may not yet be commercially available for certain types or sizes of engines and equipment used in this sector. The proposed rule includes a provision for a special time extension to deal with unique situations. Shortening the normal time frame available to this sector could create a situation where special exemptions would become the norm.

The costs of the proposed rule would also increase significantly were the final concentration limit to become effective sooner. As explained in the Agency's PREA, a substantial portion of the costs to implement these provisions were calculated using a 5-year discounting process to reflect the phase-in schedule. Speeding implementation would significantly impact costs.

Accordingly, MSHA has tentatively concluded that, for the underground metal and nonmetal sector as a whole, an accelerated approach may not be feasible.

(3) *In lieu of a concentration limit, require high efficiency filters on certain types of equipment.* In the underground coal sector, MSHA has proposed requiring high efficiency filters on all but light-duty equipment. This appears to be a very effective and feasible way of reducing dpm concentrations in that sector. Accordingly, MSHA considered requiring a similar approach in underground metal and nonmetal mines.

MSHA estimates that to require 95% efficient filters on all diesel engines in underground metal and nonmetal mines after 30 months would cost about $41 million a year. On the other hand, to require that only heavy duty equipment use 95% filters after 30 months would cost about $20 million a year. (''Heavy duty'' equipment here means equipment that moves rock or ore; for costing purposes, MSHA assumed this included production equipment and about five percent of support equipment, which is about 46% of the diesel equipment in underground metal and nonmetal mines).

The estimated costs of complying with the proposed concentration limits and the other provisions of the proposed rule are about $19.2 million a year.

This option is not the equivalent of what is being proposed for underground coal mines. The underground metal and nonmetal equipment that would be left unfiltered pursuant to this option may in some cases, have larger horsepower engines than the equipment that would be left unfiltered pursuant to the proposed rule for underground coal—and there are more pieces of equipment per mine in the underground metal and nonmetal sector (see Table II–1 in part II of this preamble).

Moreover, under the statute, MSHA must take the approach that provides miners with the greatest protection feasible. This option would be less protective than a concentration limit in this sector. Under the option, the only control in underground metal and nonmetal mines would be filters on heavy-duty equipment; by contrast, the controls MSHA has estimated will be necessary to meet the proposed concentration limit are more stringent—all production equipment will need an oxidation catalytic convertor for example, and 85% of production equipment will also need a new engine.

Moreover, the distribution of equipment and miners in underground metal and nonmetal mine areas means that the protection received under this approach—in which only 46% (i.e., the heavy duty equipment) of the equipment is filtered, and no other controls required—would likely be very uneven. Some miners might be reasonably well protected, but many others would not.

There are two other factors that mitigate against such an approach in underground metal and nonmetal mines.

First, it is not clear this approach is technologically feasible. The only filters that are currently available that can produce 95% efficiency in removing particulates are paper filters. Some of the heavy-duty engines are very large, and it may take some time before commercially available designs for filtration of this efficiency will be available to fit all types and sizes of heavy duty equipment—and work effectively without hampering equipment performance. That is why in determining the role filtration might play in this sector, the Agency assumed that replaceable ceramic filters would be used. At this time, such filters are capable of 60–85% efficiency. It is possible, of course, that once a market develops, the manufacturers of such filters might be able to produce a more efficient filter. MSHA solicits information about any such pending developments.

Second, it would appear that in many cases, a new engine and/or cab might be a more effective solution to a localized dpm concentration in an underground metal and nonmetal mine than a filter—and perhaps less expensive for equipment of this size. One of the advantages of a concentration limit is the flexibility it provides.

MSHA has not yet given detailed consideration to requiring all underground metal and nonmetal operators to utilize an oxidation catalytic converter (OCC)—in combination with a concentration limit—but intends to do so. The studies discussed above, and information from MSHA's workshops, suggests that OCCs are already widely utilized in this sector, and can reduce dpm emissions as much as 20%. MSHA assumes that this is the first control to which most operators would turn if a concentration limit were established. Accordingly, the Agency welcomes comment on whether it would be feasible and appropriate to simply require underground metal and nonmetal mining companies to install and maintain OCCs on all diesel engines.

Feasibility of proposed rule for underground metal and nonmetal mining sector. The Agency has carefully considered both the technological and economic feasibility of the proposed rule for the underground metal and nonmetal mining sector as a whole.

There are two separate issues with respect to technological feasibility—(a) the existence of technology that can accurately and reliably measure dpm concentration levels in all types of underground metal and nonmetal mines; and (b) the existence of control mechanisms that can bring dpm concentrations down to the proposed limit in all types of underground metal and nonmetal mines.

Measurement technology. Part II of this preamble contains a detailed discussion of the measurement method which MSHA is proposing to use in this sector, including the evidence MSHA examined in making its determination that this approach provides an accurate and reliable way to measure dpm concentration levels in all types of underground metal and nonmetal mines. Briefly, the method involves the use of a respirable dust sampler to collect particles on a filter, which is then analyzed using a method to detect total carbon validated by the National Institute for Occupational Safety and Health for that purpose. MSHA has concluded that total carbon, is a valid surrogate for dpm in this sector. In fact, to make the concentration limit on dpm easier to use in practice, MSHA is proposing to express that limit in terms of total carbon so that the measurement results can be directly compared with the standard's requirements.

As further explained in part IV, MSHA recognizes that any measurement system has an inherent level of uncertainty. As is its practice with other compliance determinations based on measurement, MSHA would not issue a citation that an underground metal or nonmetal mine has violated the concentration limit unless the measurement exceeds the limit (interim or final) by an amount adequate to ensure a 95% confidence level. While MSHA has not at this time reached a determination of the amount that it deems appropriate to add to the measured concentration to establish such a confidence level, it could be on the order of 11–20% (see part II discussion of measurement for details).

Control technology. The availability of control technology to enable operators to reduce their existing dpm concentrations to the proposed concentration level was discussed earlier in this part [See (1) *Establish a lower concentration limit for underground metal/nonmetal mines*'']. In fact, these studies suggest it is technologically feasible for operators in this sector to reduce their dpm concentrations to an even lower concentration limit. MSHA's publication ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—a Toolbox'' summarizes information about the mining community's experience to date with various controls. A copy of this publication is appended at the end of this document.

Although the agency has reached this conclusion, and moreover knows of no mine that cannot accomplish the required reductions in the permitted time, it has nevertheless proposed that any underground metal or nonmetal mine may have up to an additional two years to install the required controls should it find that there are unforseen technological barriers to timely completion. A detailed discussion of the requirements for obtaining approval for such an extension of time to comply is provided in part IV of the preamble. The Agency would particularly welcome comments illustrating situations which warrant further attention in this regard.

Economic Feasibility. MSHA estimates that the proposed rule would cost the underground metal and nonmetal sector about $19.2 million a year even with the extended phase-in time. The costs per underground

dieselized metal or nonmetal mine are estimated to be about $94,600 annually.

As explained in the PREA, most ($19.2 million) of the anticipated yearly costs would be investments in equipment to meet the interim and final concentration limits. While operators have complete flexibility as to what controls to use to meet the concentration limits, the Agency based its cost estimates on the assumption that operators will ultimately need the following to get to the final concentration limit: (a) all production equipment will need an oxidation catalytic converter; (b) about 38% of all equipment (production and support) will need a new engine; (c) about 8% of all equipment will need an environmentally conditioned cab; (d) about 34% of all equipment will need a 60–90% replaceable ceramic filter; and (e) 61% of all mines will need some ventilation improvement (16% fan and motor, 45% just motor). The assumptions are based on a January 1998 count of diesel powered equipment that regularly operates in the underground metal and nonmetal mines. The count was performed by MSHA's metal and nonmetal inspectors. This is a conservative estimate; as noted in discussing the possibility of having a lower concentration limit, it does not reflect the possibility that some mines may now be already cleaning up their fleet as they turn over their existing inventory. The cost estimates do reflect some facts noted in part II of this preamble: (a) unlike the coal sector, a large portion of underground metal and nonmetal mines are dieselized; (b) each mine has on average more diesel engines than in the coal sector; and (c) the engines used in these mines are more varied and heavier on average than those used in the coal sector. In addition to the costs to comply with the proposed concentration limit, the costs estimated for this sector include costs for implementing work practice controls that are similar to those already in effect in the underground coal sector.

The Agency is taking a number of steps to mitigate the impact of the rule for the underground metal and nonmetal sector, particularly on the smallest mines in this sector. These are described in detail in the Agency's Initial Regulatory Flexibility Analysis, which the Agency is required to prepare under the Regulatory Flexibility Act in connection with the impact of the rule on small entities. (The regulatory flexibility analysis can be found in part VI of this preamble, or packaged with the Agency's PREA.)

After a careful review of the information about this sector available from the industry economic profile, and the other obligations of this sector under the Mine Act, MSHA has tentatively concluded that a reasonable probability exists that the typical firm in this sector will be able at this time to afford the controls that will be necessary to meet the proposed standard. The Agency endeavored to gather information on examples of how these compliance costs would impact particular companies, and to establish whether existing order plans (e.g. for newer engines) might already contemplate costs which this rule would require, but was unable to find any significant information in this regard. The Agency welcomes information that will provide additional evidence on this important question.

Conclusion: metal and nonmetal mining sector. Based on the best evidence available at this time, the Agency has concluded that the proposed rule for the underground metal and nonmetal sector meets the statutory requirement that the Secretary attain the highest degree of health and safety protection for the miners in that sector, with feasibility a consideration.

Appendix to Part V: Diesel Emission Control Estimator

As noted in the text of this part, MSHA has developed a model that can help it estimate the impact on dpm concentrations of various control variables. The model also permits the estimation of actual dpm concentrations based upon equipment specifications. This model, or simulator, is called the ''Diesel Emission Control Estimator'' (or the ''Estimator'').

The model is capable only of simulating conditions in production or other confined areas of an underground mine. Air flow distribution makes modeling of larger areas more complex. The Estimator can be used in any type of underground mine.

While the calculations involved in this model can be done by hand, use of a computer spreadsheet system facilitates prompt comparison of the results of alternative combinations of controls. Changing a particular entry instantly changes all dependent outputs. Accordingly, MSHA developed the Estimator as a spreadsheet format. It can be used in any standard spreadsheet program.

A paper discussing this model has been presented and published as an SME Preprint (98–146) in March 1998 at the Society for Mining and Exploration Annual Meeting. It was demonstrated at a workshop at the Sixth International Mine Ventilation Congress, Pittsburgh, Pa., in June 1997. The Agency is making available to the mining community the software and instructions necessary to enable it to perform simulations for specific mining situations. Copies may be obtained by contacting: Dust Division, MSHA, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, P.O. Box 18233, Pittsburgh, Pa., 15236. The Agency welcomes comments on the proposed rule that include information obtained by using the Estimator. The Agency also welcomes comments on the model itself, and suggestions for improvements.

Determining the Current DPM Concentration. The Estimator was designed to provide an indication of what dpm concentration will remain in a production area once a particular combination of controls is applied. Its baseline is the current dpm concentration, which of course reflects actual equipment and work practices.

If the actual ambient dpm concentration is known, this information provides the best baseline for determining the outcome from applying control technologies. Any method that can reliably determine ambient dpm concentrations under the conditions involved can be utilized. A description of various methods available to the mining community is described in part II of this preamble.

If the exact dpm concentration is not known, estimates can be obtained in several ways. One way is to take a percentage of the respirable dust concentration in the area. Studies have shown that dpm can range from 50–90% of the respirable dust concentration, depending on the specific operation, the size distribution of the dust and the level of controls in place. Another method is simply to choose a value of 644 for an underground coal mine, or 830 for an underground metal or nonmetal mine. These values correspond to the average mean concentration which MSHA sampling to date has measured in such underground mines. Or, depending upon mine conditions, some other value from the range of mean mine concentrations displayed in part III of this preamble might be an appropriate baseline — for example, an average similar to that of mine sections like the one for which controls are required.

The Estimator has been designed to automatically compute another estimate of current ambient dpm concentration, and to provide outputs using this estimate even when the actual ambient dpm concentration is available and used in the model. This is done by using emissions data for the engines involved—specific manufacturer emissions data where available, or an average using the known range of emissions for each type of engine being used.

As with other estimates of current ambient dpm concentration, using engine data to derive this baseline measure does not produce the same results as actual dpm measurements. The Agency's experience is that the use of published engine emissions rates provides a good estimate of dpm exposures when the engines involved are used under heavy duty cycle conditions; for light duty cycle equipment, the published emission rates will generally overestimate the ambient particulate exposures. Also, such an approach assumes that the average ambient concentration derived is representative of the workplace where miners actually work or travel.

Columns. An example of a full spreadsheet from the Estimator is displayed as Figure V–5. The example here involves the application of various controls in an underground metal and nonmetal mine. As illustrated in the discussion in this part, the Estimator can be used equally well to ascertain what happens

to dpm concentrations in an underground coal mine when the high-efficiency filters required by the proposed rule are used under various ventilation and section dpm intake conditions. Underground coal mine operators who are interested in ascertaining what impact it might have on dpm concentrations in their mines if the proposed rule permitted the use of alternative controls, or required the use of additional controls (e.g. filters on light duty equipment), can use the Estimator for this purpose as well.

FIGURE V–5.—EXAMPLE OF ESTIMATOR SPREADSHEET RESULTS FOR A SECTION OF AN UNDERGROUND METAL AND NONMETAL MINE

[Work Place Diesel Emissions Control Estimator; Mine Name: Underground Metal and Nonmetal]

	Column A	Column B
1. MEASURED OR ESTIMATED IN MINE DP EXPOSURE (μg/m3)	330 μg/m3	
2. VEHICLE EMISSION DATA		
EMISSIONS OUTPUT (gm/hp-hr)		
VEHICLE 1 INDIRECT INJECTION 0.3–0.5 gm/hp-hr FEL	0.1 gm/hp-hr	0.1 gm/hp-hr
VEHICLE 2 OLD DIRECT INJECTION 0.5–0.9 gm/hp-hr Truck 1	0.2 gm/hp-hr	0.2 gm/hp-hr
VEHICLE 3 NEW DIRECT INJECTION 0.1–0.4 gm/hp-hr Truck 2	0.1 gm/hp-hr	0.1 gm/hp-hr
VEHICLE 4	0.0	0.0 gm/hp-hr
VEHICLE OPERATING TIME (hours)		
VEHICLE 1 FEL	9 hours	9 hours
VEHICLE 2 Truck 1	9 hours	9 hours
VEHICLE 3 Truck 2	9 hours	9 hours
VEHICLE 4	0	0 hours
VEHICLE HORSEPOWER (hp)		
VEHICLE 1 FEL	315 hp	315 hp
VEHICLE 2 Truck 1	250 hp	250 hp
VEHICLE 3 Truck 2	330 hp	330 hp
VEHICLE 4	0 hp	0 hp
SHIFT DURATION (hours)	10 hours	10 hours
AVERAGE TOTAL SHIFT PARTICULATE OUTPUT (gm)	0.09 gm/hp-hr	0.12 gm/hp-hr
3. MINE VENTILATION DATA		
FULL SHIFT INTAKE DIESEL PARTICULATE CONCENTRATION	50 μg/m3	50 μg/m3
SECTION AIR QUANTITY	155000 cfm	155000 cfm
AIRFLOW PER HORSEPOWER	173 cfm/hp	73 cfm/hp
4. CALCULATED SWA DP CONCENTRATION WITHOUT CONTROLS		551 μg/m3
5. ADJUSTMENTS FOR EMISSION CONTROL TECHNOLOGY		
ADJUSTED SECTION AIR QUANTITY	155000 cfm	155000 cfm
VENTILATION FACTOR (INITIAL CFM/FINAL CFM)	1.00	1.00
AIRFLOW PER HORSEPOWER	173 cfm/hp	173 cfm/hp
OXIDATION CATALYTIC CONVERTER REDUCTION (%)		
VEHICLE 1	0%	20%
VEHICLE 2 IF USED ENTER 0–20%.	0%	20%
VEHICLE 3	0%	0%
VEHICLE 4	0%	0%
NEW ENGINE EMISSION RATE (gm/hp-hr)		
VEHICLE 1	0.1 gm/hp-hr	0.1 gm/hp-hr
VEHICLE 2 ENTER NEW ENGINE EMISSION (gm/hp-hr).	0.2 gm/hp-hr	0.2 gm/hp-hr
VEHICLE 3	0.1 gm/hp-hr	0.1 gm/hp-hr
VEHICLE 4	0.0 gm/hp-hr	0.0 gm/hp-hr
AFTER FILTER OR CAB EFFICIENCY (%)		
VEHICLE 1 Cabs	60%	60%
VEHICLE 2 USE 65–95% FOR AFTERFILTERS.	60%	60%
VEHICLE 3 USE 50–80% FOR CABS.	60%	60%
VEHICLE 4	0%	0%
6. ESTIMATED FULL SHIFT DP CONCENTRATION	162 μg/m^3	184 μg/m^3

*NOTE: Use of the Estimator does not free operators from the requirements of the rule. It is intended to serve as a guide.

A full spreadsheet from the Estimator has two columns, labeled A and B. Column A displays information on computations where the baseline is the measured ambient dpm concentration, or whose baselines are estimated as a percentage of respirable dust or by using the mean concentration for the sector. Column B displays information on computations in which the baseline itself was derived from engine emission information entered into the Estimator.

Sections. The Estimator spreadsheet is divided into 6 sections. Sections 1 through 4 contain information on the baseline situation in the mine section. Section 5 contains information on proposed new controls, and Section 6 displays the dpm concentration expected to remain after the application of those new controls. Table V–4 summarizes the information in each section of the Estimator.

TABLE V–4.—INFORMATION NEEDED FOR OR PROVIDED BY EACH SECTION OF THE ESTIMATOR MODEL

Speadsheet section	Input/output	Mine information
Section 1	Input	Measured DP Level, μg/m^3.

TABLE V–4.—INFORMATION NEEDED FOR OR PROVIDED BY EACH SECTION OF THE ESTIMATOR MODEL—Continued

Speadsheet section	Input/output	Mine information
Section 2	Input	Engine Emissions, gm/hp-hr.
		Engine Horsepower, hp.
		Operation Times, hr.
		Shift Duration, hr.
Section 3	Input	Section Airflow, cfm
		Intake DP Level, μg/m³.
Section 4	Output	Current DP Level, μg/m³.
Section 5	Input	DP Controls: Airflow, cfm.
		Oxid. Cat. Converter, percent.
		Engine Emissions, gm/hp-hr.
		after-filters, percent.
		Cabs, percent.
Section 6	Output	Projected DP Level, μg/m³.

Section 1. This is the place to enter data on baseline dpm concentrations if obtained by actual measurement, estimate based on respirable dust concentration, or mean concentration in the mining sector. Measurements should be entered in terms of whole diesel particulate matter for consistency with engine information. Information need not be entered in this section, in which case only engine-emission derived estimates will be produced by the Estimator (in Column B).

Sections 2 and 3. Section 2 is the place to enter data about the existing engines and engine use, and section 3 is the place to enter data about current ventilation practices. This information is used in two ways. First, the Estimator uses this information to derive an estimated baseline dpm concentration (for column B). Second, by comparing this information with that in section 5 on proposed controls that would change engines, engine use, or ventilation practices, the Estimator calculates the improvement in dpm that would result.

The first information entered in section 2 is the dpm emission rate (in gm/hp-hr) for each vehicle. The Estimator in its current form provides room to enter appropriate identification information for up to four vehicles. However, when multiple engines of the same type are used, the spreadsheet can be simplified and the number of entries conserved by combining the horsepower of these engines. For example, two 97 hp, 0.5 gm/hp-hr engines can be entered as a single 194 hp, 0.5 gm/hp-hr engine. However, if the estimate is to involve the use of different controls for each engine, the data for each engine must be entered separately. In order to account for the duty cycle, the engine operating time for each piece of equipment must then be entered in section 2, along with the length of the shift.

The last item in section 2, the ''average total shift particulate output'' in grams, is calculated by the Estimator based on the measured concentration entered in section 1 (for column A, or the engine emission rates for column B), the intake concentration, engine horsepower, engine operating time, and airflow. For column A, the average total shift diesel particulate output is calculated from the formula:

$$E(a) = (DPM(m) - I)\times(Q(I)/35200)/[Sum\ (Hp(I)\times To(I))]$$

Where:

E(a) = Average engine output, gm/hp-hr
DPM(m) = Measured concentration of diesel particulate, μg/m³
Q(I) = Initial section ventilation, cfm
I = Intake concentration, μg/m³
Hp(I) = Individual engine Horsepower, hp
To(I) = Individual engine operating times, hours

For column B, the average total shift diesel particulate output is calculated from the formula:

$$E(a) = [Sum\ (E(I)\times Hp(I)\times To(I))]/[Sum\ (Hp(I))]/Ts$$

Where:

E(a) = Average engine output, gm/hp-hr
E(I) = Individual engine emission rates, gm/hp-hr
Hp(I) = Individual engine Horsepower, hp
To(I) = Individual engine operating times, hours
Ts = Shift length, hours

The ''average total shift particulate'' provides useful information in determining what types of controls would be most useful. If the average output is less than 0.3, controls such as cabs and afterfilters would have a large impact on dpm. If the average output is greater than 0.3, new engines would have a large impact on dpm.

There are two data elements concerning existing ventilation in the section that must be entered into section 3 of the Estimator: the full shift intake dpm concentration, and the section air quantity. The former can be measured, or an estimate can be used. Based upon MSHA measurements to date, an estimate of between 25 and 100 micrograms of dpm per cubic meter would account for the dpm contribution coming into the section from the rest of the mine.

The last item in section 3, the airflow per horsepower, is calculated by the Estimator from the information entered on these two items in sections 2 and 3, as an indication of ventilation system performance. If the value is less than 125 cfm/hp, consideration should be given to increasing the airflow. If the value is greater than 200 cfm/hp, primary consideration would focus on controls other than increased airflow.

Section 4. Section 4 only displays information in Column B. Using the individual engine emissions, horsepower, operating time, section airflow , intake DPM and shift length, the Estimator calculates a presumed dpm concentration. The presumed dpm concentration is calculated by the formula:

$$DPM(a) = \{[[Sum\ (E(I)\times Hp(I)\times To(I))]\times 35{,}300/Q(I)]+I\}\times[Ts/8]$$

Where:

35,300 is a metric conversion factor
DPM(a) = Shift weighted average concentration of diesel particulate, μg/m³
E(I) = Individual engine emission rates, gm/hp-hr
Hp(I) = Individual engine Horsepower, hp
To(I) = Operating time hours
Ts = Shift length, hours
Q(I) = Initial section ventilation, cfm
I = Intake concentration, μg/m³

Section 5. Information about any combination of controls likely to be used to reduce dpm emissions in underground mines—changes in airflow, the addition of oxygen catalytic converters, the use of an engine that has a lower dpm emission rate, and the addition of either a cab or aftertreatment filter—is entered into Section 5. Information is entered here, however, only if it involves a change to the baseline conditions entered into Sections 2 and 3. Entries are cumulative.

The first possible control would be to increase the system air quantity. The minimum airflow should either be the summation of the Particulate Index (PI) for all heavy duty engines in the area of the mine, or 200 cfm/hp. The spreadsheet displays the ratio between the air quantity in section 5 and that in section 3, and the airflow per horsepower.

The second possible control would be to add an oxidation catalytic converter to one or more engines if not initially present. When such converters are used, a dpm reduction of up to 20 percent can be obtained (as noted in MSHA's Toolbox). The third possible control would be to change one or more engines to newer models to reduce emissions. As noted in part II of this preamble, clean engine technology has emissions as low as 0.1 and 0.2 gm/hp-hr.

Finally, each piece of equipment could be equipped with either a cab and an

aftertreatment filter. Since MSHA considers it unlikely an operator would use both controls, the Estimator is designed to assume that no more than one of these two possible controls would be used on a particular engine. Ceramic aftertreatment filters that can reduce emissions by 65–80% are currently on the market; MSHA is soliciting information about the potential for future improvements in ceramic filtration efficiency. Paper filters can remove up to 95% or more of dpm, but these can only be used on equipment whose exhaust is appropriately cooled to avoid igniting the paper (i.e., permissible coal equipment, or other equipment equipped with a water scrubber or other cooling device). Air conditioned cabs can reduce the exposure of the equipment operator by anywhere from 50–80%. (See part II, section 6, for information on filters and cabs). But while the Estimator will produce an estimate of the full shift dpm concentration that includes the effects of using such cabs, it should be remembered that such an estimate is only directly relevant to equipment operators. Thus, cabs are a viable control for sections where the miners are all equipment operators, but they will not impact the dpm concentrations to which other miners are exposed.

Section 6. The Estimator displays in this section an estimated full shift dpm concentration. If a measured baseline dpm concentration was entered in section 1, this information will be displayed in column A. Column B displays an estimate based on the engine emissions data.

Here is how the computations are performed.

The effect of control application is calculated in Section 6, Column A from the following formula:

$$DPM(c) = \{Sum\ [(To(I) / Ts) \times 1000 \times [(E(a) / 60) \times Hp(I) \times (35300 / Q(I)) \times (Q(I) / Q(f)) \times (1-R(o)) \times (1-R(f)) \times (1-R(e))]\} + I$$

Where:

DPM(c) = Diesel particulate concentration after control application/μg/m³,
E(a) = Average engine emission rate, gm/hp-hr,
Hp(I) = Individual engine Horsepower, hp.
To(I) = Operating time hours,
I = Intake DPM concentration, μg/m³,
Q(I) = Initial section ventilation, cfm,
Q(f) = Final section ventilation, cfm,
R(o) = Efficiency of oxidation catalytic converter, decimal
R(f) = Efficiency of after filters or cab, decimal,
R(e) = Reduction for new engine technology, decimal, and

$$R(e) = (Ei—Ef) / Ei$$

Where:

R(e) = Reduction for new engine technology, decimal,
E(i) = Initial engine emission rates, gm/hp-hr,
E(f) = New engine emission rates, gm/hp-hr,

The effect of control application is calculated in Section 6, Column B from the following formula:

$$DPM(c) = \{Sum[(E(I) \times Hp(I) \times To(I)) \times (35,300 / Q(I)) \times (1-R(o)) \times (1-R(f)) \times (1-R(e))] \times [Q(I) / Q(f)]\}+I$$

Where:

DPM(c) = Diesel particulate concentration after control application/μg/m³,
E(I) = Individual engine emission rates, gm/hp-hr,
Hp(I) = Individual engine Horsepower, hp,
To(I) = Operating time hours,
I = Intake DPM concentration, μg/m³,
Q(I) = Initial section ventilation, cfm,
Q(f) = Final section ventilation, cfm,
R(o) = Efficiency of oxidation catalytic converter, decimal,
R(f) = Efficiency of after filters or cab, decimal,
R(e) = Reduction for new engine technology, decimal, and

$$R(e) = (Ei—Ef) / Ei$$

Where:

R(e) = Reduction for new engine technology, decimal,
E(i) = Initial engine emission rates, gm/hp-hr,
E(f) = New engine emission rates, gm/hp-hr.

VI. Impact Analyses

This part of the preamble reviews several impact analyses which the Agency is required to provide in connection with proposed rulemaking. The full text of these analyses can be found in the Agency's PREA.

(A) Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, MSHA has prepared a Preliminary Regulatory Economic Analysis (PREA) of the estimated costs and benefits associated with the proposed rule for the underground metal and nonmetal sector.

The key conclusions of the PREA are summarized, together with cost tables, in part I of this preamble (see Question and Answer 5). In addition, a summary of the assumptions made by MSHA about the largest cost component of the proposed rule—the costs for equipment that the underground metal and nonmetal sector will need to comply with the proposed concentration limit—can be found in part V of this preamble, in the discussion of the feasibility of the proposed rule for that sector. The complete PREA is part of the record of this rulemaking, and is available from MSHA.

The Agency considers this rulemaking ''significant'' under section 3(f) of Executive Order 12866, and has so designated the rule in its semiannual regulatory agenda (RIN 1219–AB11). However, based upon the PREA, MSHA has determined that the proposed rule does not constitute an ''economically significant'' regulatory action pursuant to section 3(f)(1) of Executive Order 12866.

(B) Regulatory Flexibility Certification and Initial Regulatory Flexibility Analysis (IRFA)

Introduction. Pursuant to the Regulatory Flexibility Act of 1980, MSHA has analyzed the impact of this rule upon small businesses. MSHA specifically solicits comments on the cost data and assumptions concerning the initial regulatory flexibility analysis for underground metal and nonmetal mine operators.

To facilitate public participation in the rulemaking process, MSHA will mail a copy of the proposed rule and this preamble to every underground metal and nonmetal mine operator. In addition, the entire IRFA is reprinted here.

Definition of Small Mine. Under SBREFA, in analyzing the impact of a proposed rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small mining entity as an establishment with 500 employees or less (13 CFR 121.201). MSHA's use of the 500 or less employees includes all employees (miners and office workers). Almost all mines (including underground coal mines) fall into this category and hence, can be viewed as sharing the special regulatory concerns which the RFA was designed to address. That is why MSHA has, for example, committed to providing to all underground metal and nonmetal mine operators a copy of a compliance guide explaining provisions of this rule.

The Agency is concerned, however, that looking only at the impacts of the proposed rule on all the mines in this sector does not provide the Agency with a very complete picture on which to make decisions. Traditionally, the Agency has also looked at the impacts of its proposed rules on what the mining community refers to as ''small mines''—those with fewer than 20 miners. The way these small mines perform mining operations is generally recognized as being different from the way other mines operate which has led to special attention by the Agency and the mining community.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing MSHA's traditional look at ''small mines''.

Underground Metal and Nonmetal Mines: Initial Regulatory Flexibility Analysis. Since MSHA has not recently prepared an initial regulatory flexibility analysis in connection with a proposed rule, the mining community has not had an opportunity to review such an analysis. Accordingly, some background may be helpful.

The requirements for an initial RFA should describe the impact of the proposed rule on small entities. Each initial RFA analysis shall contain:

''(1) A description of the reasons why action by the Agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rule which may duplicate, overlap or conflict with the proposed rule.''

In addition, ''Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objective of applicable statutes, the analysis shall discuss significant alternatives such as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) The use of performance rather than design standards;

(4) and an exemption from coverage of the rule, or any part thereof, for such entities.''

MSHA would encourage the mining community to structure its comments on these points in a similar manner so that the Agency will be able to clearly respond to them in its final analysis.

MSHA hopes the presentation that follows will provide reviewers enough information to readily grasp the implications of the rule for small entities in particular, but it strongly encourages reviewers to also pursue the referenced discussions of risk, feasibility, historical and other information in the preamble accompanying the proposed rule.

Reasons Why Agency Action is Being Considered. A rule is needed for underground metal and nonmetal mines to assure that a significant risk of material impairment to the health of miners working in these mines is reduced to the extent economically and technologically feasible for this sector as a whole. The risk is created by the presence of diesel engines in the closed environment of underground metal and nonmetal mines which generate in their emissions very high concentrations of particulate matter. These very small particles penetrate to the deepest regions of the lung. As explained in detail in Part III of the preamble accompanying the proposed rule, exposure to high concentrations of diesel particulate matter puts miners at significant risk of material impairment to their health. These elevated risks include, but are not limited to, an increased risk of lung cancer. At the present time, many underground miners, including many miners in underground metal and nonmetal mines, are exposed to levels of diesel particulate matter that far exceed the exposures of any other group of workers in the United States. The reductions in exposure to diesel particulate required in this sector will necessitate changes in mine equipment and practices that are too significant to bring about without regulatory action.

Objectives of the Rule; Legal Basis. MSHA has two related objectives it hopes to accomplish through the rulemaking for underground metal and nonmetal mines. For miners in this sector, it is MSHA's objective that they will no longer be exposed to diesel particulate matter in far greater concentrations than any other group of workers in this country. For mine operators in this sector, it is MSHA's objective to provide each with flexibility as to the controls they may implement to reduce the concentration of diesel particulate matter to the prescribed limit.

The proposed rule won't eliminate the risk of harm, nor even reduce exposures to the level which industry experts are considering establishing as a Threshold Limit Value, but it would reduce miner exposures to levels comparable to those faced by workers in other industries who work around diesel powered equipment. While MSHA has tentatively concluded that there may remain a significant risk to miner health even with this proposed rule, the Agency has also tentatively concluded that: (a) the proposed rule would provide substantial health benefits; and (b) additional controls beyond those provided for in the proposed rule may not be feasible for the underground metal and nonmetal sectors at this time.

Initially, MSHA had an additional objective in this rulemaking: to establish a uniform rule for all mining sectors because uniformity tends to be the most effective solution for worker's health and for industry compliance. After exploring the implications of such an approach, however, the Agency concluded that a uniform approach does not appear to be feasible at this time. MSHA has tentatively concluded that while there is a technological fix available for underground coal mine operators, the best solution for underground metal and nonmetal mine operators will vary considerably. Moreover, while the Agency has confidence that there is a validated method for measuring diesel particulate matter concentrations in underground metal and nonmetal mines, it believes some further work is necessary before recommending that such an approach be used in underground coal mines due to the possibility of contamination of the samples by coal dust. The Agency will reconsider this approach in light of the record in this proceeding before finalizing a rule, but at this point has concluded that it cannot justify proposing a uniform approach to this problem at this time.

MSHA has an obligation under § 101(a)(6)(A) of the Federal

Mine Safety and Health Act of 1977 (the ''Mine Act'') which requires the Secretary to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health over the miner's working lifetime. The Mine Act makes no distinction between the obligations of operators based on size.

Number and Description of Small Entities Affected. Number and Description of Small Entities Affected

Underground metal and nonmetal mine operators have used diesel-powered equipment for a long time, and they are highly dependent upon such equipment for production. As discussed in detail in part II of the preamble accompanying the proposed rule, a major role of such equipment involves haulage. For example, front-end loaders or load-haul-dump machines remove the metal or mineral deposits from where it was blasted or cut in the mine. However, other types of diesel machinery can also be found in

underground metal and nonmetal mines. Examples of some of these other types of diesel powered machines are: roof bolters, jumbo drills, scalers, water trucks, and transport or maintenance vehicles. MSHA's January 1998 count of the number of diesel powered equipment in underground metal and nonmetal mines, shows that of the 261 underground metal and nonmetal mines, there are 203 mines that use diesel powered equipment on a regular basis.

Under MSHA's traditional definition of a small mine (those that employ less than 20), about 40 percent of the 203 underground metal and nonmetal mines that use diesel powered equipment (82 mines) would be considered small underground mines. Approximately 69 percent of these small underground mines (57 mines ÷ mines) are involved in the production of limestone (47 mines) or gold (10 mines). The largest number of small underground mines that are involved in the production of the same commodity are limestone mines. Underground limestone mines account for 57 percent of small mines (47 mines ÷ mines). These 82 small underground mine operators employ approximately 5 percent of all underground metal and nonmetal mine employment, and account for about 15 percent of the diesel powered equipment found in underground metal and nonmetal mines. On average, about 7.5 diesel powered machines are in a small mine, when MSHA's definition of a small mine is used.

Under the SBA definition of a small mine (those that employ 500 or less), about 97 percent of the 203 underground metal and nonmetal mines that use diesel powered equipment (196 mines) would be considered small underground mines. Approximately 68 percent of these small underground mines (134 mines ÷ 196 mines) are involved in the production of: limestone (85 mines), gold (27 mines), Salt (12 mines), and Zinc (10 mines). Again, the largest number of small underground mines that are involved in the production of the same commodity are limestone mines. Underground limestone mines account for 43 percent of small mines (85 mines ÷ 196 mines). These 196 small underground mine operators employ approximately 70 percent of all underground metal and nonmetal mine employment, and account for about 83 percent of the diesel powered equipment found in underground metal and nonmetal mines. On average, about 17 diesel powered machines are in a small mine, when SBA's definition of a small mine is used.

The industry profile in part II of this document provides some further information concerning the characteristics of underground metal and nonmetal mines.

Proposed Rule Requirements. The compliance requirements of the proposed rule for underground metal and nonmetal mine operators are described in detail in the preamble to the rule. The compliance costs to mine operators are described in detail in the PREA. The material following briefly summarizes key elements of the proposed rule.

The proposed rule would require that underground metal and nonmetal mine operators, including small mine operators, observe a set of ''best practices'' underground to reduce engine emissions of diesel particulate matter. (Similar practices are already in effect in underground coal mines as a result of MSHA's diesel equipment rule).

Only low-sulfur diesel fuel and EPA-approved fuel additives would be permitted to be used in diesel-powered equipment in underground areas. Idling of such equipment that is not required for normal mining operations would be prohibited. In addition, diesel engines would have to be maintained in good condition to ensure that deterioration does not lead to emissions increases—approved engines would have to be maintained in approved condition; the emission related components of non-approved engines would have to be maintained in accordance with manufacturer specifications; and any installed emission device would have to be maintained in effective condition. Equipment operators in underground metal and nonmetal mines would be authorized to tag equipment with potential pollution problems, and tagged equipment would have to be ''promptly'' referred for a maintenance check. As an additional safeguard in this regard, maintenance of this equipment would have to be done by persons qualified by virtue of training or experience to perform the maintenance.

The proposed rule would also require that, with the exception of diesel engines used in ambulances and fire-fighting equipment, any diesel engines added to the fleet of an underground metal or nonmetal mine, 60 days after the date the rule is promulgated, must be an engine approved by MSHA under Part 7 or Part 36. The composition of the existing fleet would not be impacted by this part of the proposed rule.

In addition, the proposed rule would establish a limit on the concentration of diesel particulate matter permitted in areas of an underground metal or nonmetal mine where miners normally work or travel.

All underground metal and nonmetal mine operators would be given a full five years to meet this limit. However, starting eighteen months after the rule is published, underground metal and nonmetal mine operators would have to observe an interim limit. No limit at all on the concentration of diesel particulate matter would be applicable for the first eighteen months following promulgation. Instead, this period would be used to provide compliance assistance to the underground metal and nonmetal mining community to ensure it understands how to measure and control diesel particulate matter concentrations in individual operations.

An underground metal and nonmetal mine operator would have to use engineering or work practice controls to keep diesel particulate matter concentrations below the applicable limit. Administrative controls (e.g., the rotation of miners) and personal protective equipment (e.g., respirators) do not reduce the concentration of diesel particulate, and so are not permitted as a means of permanent compliance with this standard. When a mine operator is granted an extension to come into compliance with the concentration limit under the narrow range of circumstances permitted in the rule, MSHA may require the mine operator to utilize personal protective equipment or administrative controls during the duration of the extension period. An underground operator could filter the emissions from diesel-powered equipment, install cleaner-burning engines, increase ventilation, improve fleet management, or use a variety of other readily available controls; the selection of controls would be left to the operator's discretion. MSHA has published a ''toolbox'' of approaches that can be used to reduce diesel particulate matter. MSHA will make available an ''Estimator'' that operators can plug into a standard spreadsheet program to enable them to evaluate the effects of alternative controls in an area of a mine before purchasing and implementation decisions are made.

MSHA has studied a number of metal and nonmetal mines, as described in part V of the preamble accompanying the proposed rule, which the Agency had reason to think might have particular difficulty in controlling diesel particulate matter concentrations. As a result of these studies, the Agency believes that in combination with the required ''best practices,'' engineering and work practice controls are available that can bring diesel particulate matter concentrations in all underground metal

and nonmetal mines down to the interim and final concentration limits in a timely manner. Nevertheless, the proposed rule would provide that if an operator of an underground metal or nonmetal mine can demonstrate that there is no combination of controls that can, due to technological constraints, be implemented within that time to reduce the concentration of diesel particulate matter to the limit, MSHA may approve an application for an extension of time to comply with the diesel particulate matter concentration limit. Such a special extension is available only once, and is limited to 2 years.

Sampling to determine compliance with the diesel particulate matter concentration limit would be performed directly by MSHA, rather than relying upon underground metal and nonmetal mine operator samples; however, the proposed rule would also require all underground metal and nonmetal mine operators using diesel-powered equipment to sample as often as necessary to effectively evaluate diesel particulate matter concentrations at the mine.

The proposed rule would require that if an underground metal or nonmetal mine operator is in violation of the applicable limit on the concentration of diesel particulate matter, a diesel particulate matter compliance plan must be established and remain in effect for 3 years. Reflecting practices in this sector, the plan would not have to be preapproved by MSHA, but must be retained at the mine site. The plan would include information about the diesel-powered equipment in the mine and applicable controls. The proposed rule would require operator sampling to verify that the plan is effective in bringing diesel particulate matter levels at or below the applicable limit, with the records kept at the mine site with the plan to facilitate review.

To enhance miner awareness of the hazards involved, underground mine operators using diesel-powered equipment must annually train miners exposed to diesel particulate matter on the hazards associated with that exposure, and in the controls being used by the operator to limit diesel particulate matter concentrations. Underground mine operators may propose to include this training in their existing Part 48 training plans.

Table VI–1 summarizes the compliance costs of the proposed rule, including paperwork costs, to underground metal and nonmetal mine operators. As can be seen in the table, of the approximately $19.2 million per year estimate of total compliance cost for all underground metal and nonmetal mine operators, mines with 19 or fewer miners are estimated to incur approximately $4.6 million per year (an average cost of about $56,100 per year per small mine). When the definition of a small mine operator is 500 or less employees, then nearly all underground metal and nonmetal mine operators would be included (under such a definition, MSHA estimates that approximately $17.2 million of the total $19.2 million would be incurred by small mine entities (an average cost of about $87,800 per year per small mine). A discussion of the benefits of the proposed rule can be found in part I of this preamble (see response to Question 5).

TABLE VI-1
COMPLIANCE COSTS FOR
UNDERGROUND METAL AND NONMETAL MINE OPERATORS
(DOLLARS X 1,000)

	Small Mines With 19 or less miners	All Mines
Detail	Per Year Costs[1]	Per Year Costs[1]
57.5060 (a)	$2,677	$11,046
57.5060 (b)	$1,627	$6,537
57.5060(c)	$2	$12
57.5062	$1	$6
57.5066	$8	$38
57.5067	$121	$852
57.5070	$5	$203
57.5071	$122	$486
57.5075	$1	$4
Total	$4,564	$19,184

1.Per year compliance costs is composed of the addition of annualized and annual compliance costs.

With respect to underground metal and nonmetal mine operators the paperwork requirements include paperwork associated with training for persons maintaining diesel powered equipment, annual training for those miners affected by the hazards of diesel particulate matter, sampling for diesel particulate matter, observation of sampling, and tagging equipment with pollution problems. In addition, there are paperwork requirements for a small portion of underground metal and nonmetal mines that pertain to writing applications to extend the period to comply with the proposed concentration limits, and for writing a diesel particulate control plan.

With a few exceptions, MSHA estimates that all recordkeeping and recording related compliance costs, and all of the other requirements of the standard, will require no special professional background beyond that currently found in the managers of the underground mines in this sector. Based on a small mine definition of less than 20 employees, all small underground metal and nonmetal mine operators, as well as half of the large mines, are assumed to have sampling performed by an independent contractor, because this would be cheaper than setting up their own sampling program and purchasing the required sampling equipment. Also, regardless of what definition is used to define small mines, all underground metal and nonmetal mine operators would have the sample analysis performed by an independent contractor, since the underground mines do not have the expertises or equipment to analyze for diesel particulate matter. Again, no matter what definition is used to define small mines, underground metal and nonmetal mine operators would need to go outside of the mine expertise to receive a portion of their maintenance training.

Based on a small mine definition of less than 20 miners, the total number of annual burden hours to the 82 small underground metal and nonmetal mine operators would be 436. When the definition of a small mine is 500 or less employees, the total number of annual burden hours to 196 small underground metal and nonmetal mine operators would be 3,472.

Impact of Other Federal Rules. There are no other Federal (or for that matter State) rules of which MSHA is aware that would duplicate, overlap or conflict with the proposed rule for underground metal and nonmetal mines.

Significant Alternatives Considered. The Agency considered, and adopted as part of the proposed rule, features designed to minimize the impacts on

small entities, and the smallest metal and nonmetal mines in particular, consistent with the stated objectives of the Mine Act. It is important to note in this regard that in implementing the Mine Act's requirement that the Secretary attain the highest degree of safety and health protection, consistent with feasibility, the Agency based its decisions on the technological and economic feasibility of the proposed rule on detailed information about the impacts on mines with 500 or fewer employees and, separately, that segment of these mines with less than 20 employees. Part V of the preamble accompanying the proposed rule reviews the decisions made by the Agency with respect to this statutory obligation.

Under the proposed rule no limit on diesel particulate concentration would be in effect for 18 months, during which time the Agency would provide extensive compliance assistance to the mining community. During this time, MSHA would be working with small underground metal and nonmetal mine operators to provide help concerning the measuring of diesel particulate concentrations. In addition, MSHA would use this time to provide technical assistance about control methods to small mine operators.

In fact, this individualized compliance assistance would supplement general guidance the Agency has already started to provide to the mining industry, and to small mines in particular. In 1995, the Agency held three workshops in various areas of the country to enable the mining community to share ideas on practical ways to control diesel emissions, and made transcripts of these workshops widely available. Subsequently, the Agency published a ''toolbox'' to disseminate this information in a format designed to facilitate use by small mines in particular (appended to the end of this document is a copy of an MSHA publication, ''Practical Ways to Reduce Exposure to Diesel Exhaust in Mining—A Toolbox). Moreover, before the rule goes into effect, the Agency will also develop and distribute a compliance guide, as required by SBREFA, and will provide information to small mines through such other formats as may be suggested by the mining community. For example, MSHA is also considering creating a one page fact sheet or card that can be used by the mining industry to complement training requirements concerning notification of affected miners of the hazards associated with diesel particulate. This can be of particular help to small mine operators who have training resources that may not be as extensive as those found in large mining operations. MSHA will also mail a copy of the proposed rule to every underground mine operator which primarily benefits small operators.

Beyond the initial 18 months the proposed rule would provide for compliance assistance. Also, the proposed rule reflects a preliminary decision by the agency to delay for a full 5 years after promulgation of a final rule the effective date of the requirement which will have the most significant impact on small underground metal and nonmetal mines—the concentration limit for diesel particulate. An interim concentration limit would apply until that date—a limit that should not be at all difficult for small mines to reach, particularly after all of the compliance assistance that precedes it. This extended time for full implementation of the proposed rule ensures that technological issues can be timely resolved prior to the final rule's effective date. It also recognizes that this rule is a significant one for the underground metal and nonmetal sector, that almost all mines in this sector are considered small entities under SBA's definition, and that having adequate time to come into full compliance is of particular importance to the smallest mines in this sector.

Finally, MSHA is including a one-time two-year extension for mines that require additional time to adopt to the final concentration limits.

Other features of the proposed rule also reflect MSHA's recognition of the size distribution of the entities which have to implement any requirements. Special attention was paid to making the rule's requirements comprehensible to the mining community, including the provision of a chart summarizing recordkeeping requirements, and comments in that regard are being solicited. Training and operator sampling requirements were specifically designed to be performance oriented to minimize costs, while at the same time ensure that the important protections that flow from such approaches are included in every mine operator's approach to this health problem.

MSHA did consider a regulatory approach that would have focused on limiting worker exposure rather than limiting particulate concentration. Under such an approach, operators would have been able to use administrative controls (e.g., rotation of personnel) and respiratory protection equipment to reduce diesel particulate exposure. It is generally accepted industrial hygiene practice, however, to eliminate or minimize hazards before resorting to personal protective equipment. Moreover, while rotation of workers may be a perfectly acceptable practice for a hazard like noise (where reducing exposure can allow the ear to recover, thus avoiding any harm), such a practice is generally not considered acceptable in the case of carcinogens since it merely places more workers at risk. Also, allowing use of these practices would not necessarily help the smallest mines, not all small mines can efficiently rotate workers. Accordingly, the agency declined to propose such an approach for this serious health hazard, although it welcomes comments in this regard.

MSHA is proposing dpm concentration limits as the core of the rule. Although the Agency has developed costs in terms of assumptions about the numbers of engineering controls that will be required to meet the standard, design standards are not the point of the regulation. Rather, the Agency has suggested as broad a menu of compliance techniques as is practicable, so that individual mines can select specific techniques that best fit their circumstances.

The Agency has also declined to propose alternatives involving design standards or specific frequency requirements, which it believes would have had a more significant impact on small entities in the underground metal and nonmetal mining sector—although it will certainly take another look at these if the rulemaking record so warrants. Section 101(a)(6)(A) of the Mine Act requires the Secretary when promulgating standards dealing with toxic substances or harmful physical agents to base such mandatory standards on the best available evidence, to most adequately assure that no miner will suffer material impairment of health over his working lifetime. The Act also requires that when promulgating such standards, other factors such as the latest scientific data in the field, the feasibility of the standard and experience gained under the Act and other health and safety laws be considered. Thus, the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, based on the ''best available evidence'', with feasibility as a consideration.

As a result of this requirement, MSHA seriously considered alternatives that would have significantly increased costs for both large and small mine operators. For example, in light of the health risks involved, and the existing environmental restrictions on particulate matter, the Agency considered proposing for underground

metal and nonmetal mine operators a lower limit on the concentration of diesel particulate, and shortening the time frame to get to a final limit. The Agency has tentatively concluded, however, that such approaches would not be feasible for this sector as a whole. The Agency also considered requiring more stringent work practice and engine controls in this sector than those ultimately proposed—i.e., practices exactly like those applicable in the underground coal sector. Such an alternative would have required: (a) weekly emissions tests of diesel powered equipment in underground metal and nonmetal mines instead of just tagging suspect equipment for prompt inspection; (b) requiring these mines to establish training programs for maintenance personnel; and (c) requiring the metal and nonmetal diesel powered fleet to be turned over completely within a few years so as to have only approved engines. The Agency concluded, however, that the concerns which warranted such an approach in underground coal mines had not been established in underground metal and nonmetal mines; and that with respect to the risks created by diesel particulate matter, the approach taken in the proposed rule could provide adequate protection in a cost effective manner.

MSHA also considered other rigorous requirements such as: requiring the installation of a particulate filter on every new piece of diesel powered equipment added to the underground metal and nonmetal diesel powered fleet regardless of the diesel particulate matter concentration level as an added layer of miner protection, establishing a fixed schedule for operator monitoring of the concentration of diesel particulate emissions, and requiring that diesel particulate control plans be preapproved by MSHA before implementation to ensure that their effectiveness had been verified. These approaches were not included in the proposed rule because MSHA concluded that less stringent alternatives could achieve the same level of protection with less adverse impact on underground mining operations, especially small underground mining operations.

MSHA welcomes comments on whether there are significant alternatives it should consider that would accomplish the previously stated purpose and objectives of this rulemaking while reducing the impact on small entities. In this regard, the Agency would also welcome suggestions for alternatives that focus on addressing special concerns on the very smallest mines in this sector—those with less than 20 miners. It is important to remember, however, that under the Mine Act, smaller mines must provide the same level of protection to their workers as larger mines.

As required under the law, MSHA will be consulting with the Chief Counsel for Advocacy on the initial regulatory flexibility analysis for the underground metal and nonmetal mining sector. Consistent with agency practice, notes of any meetings with the Chief Counsel's office on this rule, or any written communications, will be placed in the rulemaking record. The Agency will continue to consult with the Chief Counsel's office as the rulemaking process proceeds.

(C) Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this proposed rule does not significantly or uniquely affect small governments.

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

Based on the analysis in the Agency's preliminary Regulatory Economic Statement, the compliance costs of this proposed rule for the underground metal and nonmetal mining industry are about $19.2 million per year. Accordingly, there is no need for further analysis under § 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the proposed regulation. The proposed rule affects only underground metal and nonmetal mines, and MSHA is not aware of any state, local or tribal government ownership interest in underground mines. MSHA seeks comments of any state, local, and tribal government which believes that they may be affected by this rulemaking.

(D) Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). Tables VI–2 and VI–3 show the estimated annual reporting burden hours associated with each proposed information collection requirement. These burden hour estimates are an approximation of the average time expected to be necessary for a collection of information, and are based on the information currently available to MSHA. Included in these estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

MSHA invites comments on: (1) Whether any proposed collection of information presented here (and further detailed in the Agency's PREA) is necessary for proper performance of MSHA's functions, including whether the information will have practical utility; (2) the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission. The Agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, OMB New Executive Office Bldg., 725 17th St. NW., Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Submit written comments on the information collection not later than December 28, 1998.

The Agency's complete paperwork submission is contained in the PREA/IRFA, and includes the estimated costs and assumptions for each proposed paperwork requirement (these costs are also included in the Agency's cost and benefit analyses for the proposed rule). A copy of the PREA/IRFA is available from the Agency. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995.

Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

Description of Respondents. Those required to provide the information are underground metal and nonmetal mine operators and diesel engine manufacturers.

Description. The proposed rule contains information collection requirements for: underground metal and nonmetal mine operators in §§ 57.5060, 57.5062, 57.5066, 57.5070, 57.5071 and 57.5075; and for diesel engine manufacturers in Part 7, subpart E. Annual burden hours are 3,865 for underground metal and nonmetal mines. There are 36 burden hours related to manufacturers of diesel powered engines which would recur annually.

Tables VI–2 and VI–3 summarize the burden hours for mine operators and manufacturers by section.

TABLE VI–2.—UNDERGROUND METAL AND NONMETAL MINES BURDEN HOURS

Detail	Large	Small	Total
57.5060	306	123	429
57.5062	49	11	60
57.5066	207	76	283
57.5070	136	6	142
57.5071	2,600	213	2,813
57.5075	131	7	138
Total	3,429	436	3,865

TABLE VI–3.—DIESEL ENGINE MANUFACTURERS BURDEN HOURS

Detail	Total
Part 7, Subpart E	36
Total	36

(E) National Environmental Protection Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 et seq.), the regulation of the Council on Environmental Quality (40 CFR Part 1500), and the Department of Labor's NEPA procedures (29 CFR Part 11). As a result of this review, MSHA has preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

(F) Executive Order 13045

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, MSHA has evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposal would not have an adverse impact on children.

Part VII. References

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List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and nonmetal, Mine safety and health, Underground mines.

Dated: October 16, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 57—[AMENDED]

1. The authority citation for Part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

2. The heading of Subpart D of Part 57 is revised to read as follows: ''Subpart D—Air Quality, Radiation, Physical Agents, and Diesel Particulate Matter''

3. Sections 57.5060 through 57.5075, and in undersigned center heading, are added to Subpart D to read as follows:

Subpart D—Air Quality, Radiation, Physical Agents and Diesel Particulate Matter

Diesel Particulate Matter—Underground Only

§ 57.5060 Limit on concentration of diesel particulate matter.

(a) After [the date 18 months after the date of publication of the final rule] and until [the date 5 years after the date of publication of the final rule], any mine operator covered by this part shall limit the concentration of diesel particulate matter to which miners are exposed by restricting the average eight-hour equivalent full shift airborne concentration of total carbon, where miners normally work or travel, to 400 micrograms per cubic meter of air (400_{TC} $\mu g/m^3$).

(b) After [the date 5 years after the date of publication of the final rule], any mine operator covered by this part shall limit the concentration of diesel particulate matter to which miners are exposed in underground areas of a mine by restricting the average eight-hour equivalent full shift airborne concentration of total carbon, where miners normally work or travel, to 160 micrograms per cubic meter of air (160_{TC} $\mu g/m^3$).

(c)(1) If, as a result of technological constraints, a mine requires additional time to come into compliance with the limit specified in paragraph (b) of this section, the operator of the mine may file an application with the Secretary for a special extension.

(2) No mine may be granted more than one special extension, nor may the time otherwise available under this section to a mine to comply with the limit specified in paragraph (b) of this section be extended by more than two years.

(3) The application for a special extension may be approved, and the additional time authorized, only if the application includes information adequate for the Secretary to ascertain:

(i) That diesel-powered equipment was used in the mine prior to October 29, 1998;

(ii) That there is no combination of controls that can, due to technological constraints, bring the mine into full compliance with the limit specified in paragraph (b) of this section within the time otherwise specified in this section;

(iii) The lowest achievable concentration of diesel particulate, as demonstrated by data collected under conditions that are representative of mine conditions using the method specified in § 57.5061(b); and

(iv) The actions the operator will take during the duration of the extension to:

(A) Maintain the lowest concentration of diesel particulate; and

(B) Minimize the exposure of miners to diesel particulate.

(4) An application for a special extension may be approved only if:

(i) The application is filed at least 180 days prior to the date the mine is required by this section to be in full compliance with the limit established by paragraph (b) of this section; and

(ii) The application certifies that one copy of the application has been posted at the mine site for 30 days prior to the date of application, and another copy has been provided to the authorized representative of miners.

(5) A mine operator shall comply with the terms of any approved application for a special extension. A copy of an approved application for a special extension shall be posted at the mine site for the duration of the special extension period.

(d) An operator shall not utilize personal protective equipment, nor shall an operator utilize administrative controls, to comply with the requirements of either paragraph (a) or paragraph (b) of this section.

§ 57.5061 Compliance determinations.

(a) A single sample collected and analyzed by the Secretary in accordance with the procedure set forth in paragraph (b) of this section shall be an adequate basis for a determination of noncompliance with an applicable limit on the concentration of diesel particulate matter pursuant to § 57.5060.

(b) The Secretary will collect and analyze samples of diesel particulate matter by using the method described in NIOSH Analytical Method 5040 and determining the amount of total carbon, or by using any method subsequently determined by NIOSH to provide equal or improved accuracy in mines subject to this part.

§ 57.5062 Diesel particulate matter control plan.

(a) In the event of a violation by the operator of an underground metal or nonmetal mine of the applicable concentration limit established by § 57.5060, the operator, in accordance with the requirements of this section, must—

(1) Establish a diesel particulate matter control plan for the mine if one is not already in effect, or modify the existing diesel particulate matter control plan, and

(2) Demonstrate that the new or modified diesel particulate matter

control plan is effective for controlling the concentration of diesel particulate matter to the applicable concentration limit specified in § 57.5060.

(b) A diesel particulate control plan shall describe the controls the operator will utilize to maintain the concentration of diesel particulate matter to the applicable limit specified by § 57.5060. The plan shall also include a list of diesel-powered units maintained by the mine operator, together with information about any unit's emission control device and the parameters of any other methods used to control the concentration of diesel particulate matter. The plan may be consolidated with the ventilation plan required by § 57.8520. A copy of the current diesel particulate matter control plan shall be retained at the mine site during its duration and for one year thereafter.

(c) An operator shall demonstrate plan effectiveness by monitoring, using the measurement method specified by § 57.5061(b), sufficient to verify that the plan will control the concentration of diesel particulate matter to the applicable limit under conditions that can be reasonably anticipated in the mine. A copy of each verification sample result shall be retained at the mine site for five years. Such operator monitoring shall be in addition to, and not in lieu of, any sampling by the Secretary pursuant to § 57.5061.

(d) The records required by paragraphs (b) and (c) of this section shall be available for review upon request by the authorized representative of the Secretary, the authorized representative of the Secretary of Health and Human Services, or the authorized representative of miners. In addition, upon request by the District Manager or the authorized representative of miners for a copy of any records required to be maintained pursuant to paragraph (b) or (c) of this section, the operator shall provide such copy.

(e)(1) A control plan established as a result of this section shall remain in effect for 3 years from the date of the violation which caused it to be established, except as provided in paragraph (e)(3) of this section.

(2) A control plan modified as a result of this section shall remain in effect, as so modified, for 3 years from the date of the violation which caused the plan to be modified, except as provided in paragraph (e)(3) of this section.

(3) An operator shall modify a diesel particulate matter control plan during its duration as required to reflect changes in mining equipment or circumstances, and shall, upon request from the Secretary, demonstrate the effectiveness of the modified plan by monitoring, using the measurement method specified by § 57.5061(b), sufficient to verify that the plan will control the concentration of diesel particulate matter to the applicable limit under conditions that can be reasonably anticipated in the mine.

(f) Failure of an operator to comply with the provisions of the diesel particulate matter control plan in effect at a mine or to conduct required verification sampling shall be a violation of this part without regard for the concentration of diesel particulate matter that may be present at any time.

§ 57.5065 Fueling and idling practices.

(a) Diesel fuel used to power equipment in underground areas shall not have a sulfur content greater than 0.05 percent. The operator shall retain purchase records evidencing compliance with this requirement for one year after the date of purchase.

(b) Only fuel additives registered by the U.S. Environmental Protection Agency shall be used in diesel powered equipment operated in underground areas.

(c) Idling of mobile diesel-powered equipment in underground areas is prohibited except as required for normal mining operations.

§ 57.5066 Maintenance standards.

(a) Any diesel powered equipment operated at any time in underground areas shall meet the following maintenance standards:

(1) Any approved engine shall be maintained in approved condition;

(2) The emission related components of any non-approved engine shall be maintained to manufacturer specifications; and

(3) Any emission or particulate control device installed on the equipment shall be maintained in effective operating condition.

(b)(1) A mine operator shall authorize and require each miner operating diesel powered equipment covered by paragraph (a) of this section to affix a visible and dated tag to such equipment at any time the miner notes any evidence that the equipment may require maintenance in order to comply with the maintenance standards of paragraph (a) of this section.

(2) A mine operator shall ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized by the mine operator to maintain diesel equipment, and the affixed tag shall not be removed until such examination has been completed.

(3) A mine operator shall retain a log of any equipment tagged pursuant to this section. The log shall include the date the equipment is tagged, the date an examination was made of such equipment, the name of the person making such examination, and any action taken as a result of such examination. The information in the log with respect to any piece of equipment examined as a result of this section shall be retained for one year after the date of examination.

(c) Persons authorized by a mine operator to maintain diesel equipment covered by paragraph (a) of this section must be qualified, by virtue of training or experience, to ensure that the maintenance standards of paragraph (a) of this section are observed. An operator shall retain appropriate evidence of the competence of any person to perform specific maintenance tasks in compliance with those standards for one year after the date of any maintenance, and shall upon request provide such documentation to the authorized representative of the Secretary.

§ 57.5067 Engines.

Any diesel engine introduced into an underground area of a mine covered by this part after [date 60 days after date publication of the final rule], other than an engine in an ambulance or fire fighting equipment which is utilized in accordance with mine fire fighting and evacuation plans, must have affixed a plate evidencing approval of the engine pursuant to subpart E of Part 7 of this title or pursuant to Part 36 of this title.

§ 57.5070 Miner training.

(a) All miners at a mine covered by this part who can reasonably be expected to be exposed to diesel emissions on that property shall be trained annually in—

(1) The health risks associated with exposure to diesel particulate matter;

(2) The methods used in the mine to control diesel particulate matter concentrations;

(3) Identification of the personnel responsible for maintaining those controls; and

(4) Actions miners must take to ensure the controls operate as intended.

(b) An operator shall retain at the mine site a record that the training required by this section has been provided for one year after completion of the training.

§ 57.5071 Environmental monitoring.

(a) Mine operators shall monitor as often as necessary to effectively evaluate, under conditions that can be reasonably anticipated in the mine—

(1) Whether the concentration of diesel particulate matter in any area of

the mine where miners normally work or travel exceeds the applicable limit specified in § 57.5060; and

(2) The average full shift airborne concentration of diesel particulate matter at any position or on any person designated by the Secretary.

(b) The mine operator shall provide affected miners and their representatives with an opportunity to observe exposure monitoring required by this section. Mine operators must give prior notice to affected miners and their representatives of the date and time of intended monitoring.

(c) If any monitoring performed under this section indicates that the applicable concentration limit established by § 57.5060 has been exceeded, an operator shall promptly post notice of the corrective action being taken, initiate corrective action by the next work shift, and promptly complete such corrective action.

(d)(1) The results of monitoring for diesel particulate matter, including any results received by a mine operator from sampling performed by the Secretary, shall be posted on the mine bulletin board within 15 days of receipt and shall remain posted for 30 days, and a copy shall be provided to the authorized representative of miners.

(2) The results of any samples collected by a mine operator as a result of monitoring under this section, and information about the sampling method used for obtaining such samples, shall be retained for five years from the date of the sample.

§ 57.5075 Diesel particulate records.

(a) The table entitled ''Diesel Particulate Recordkeeping Requirements'' lists the records which must be retained by operators pursuant to §§ 57.5060 through 57.5071, and the duration for which particular records need to be retained.

DIESEL PARTICULATE RECORDKEEPING REQUIREMENTS

Record	Section reference	Retention time
Approved application for extension of time to comply with final concentration limit	§ 57.5060(c)	1 year beyond duration of extension.
Control plan	§ 57.5062(b)	1 year beyond duration of plan.
Compliance plan verification sample results	§ 57.5062(c)	5 years from sample date.
Purchase records noting sulfur content of diesel fuel	§ 57.5065(a)	1 year beyond date of purchase.
Maintenance log	§ 57.5066(b)	1 year after date any equipment is tagged.
Evidence of competence to perform maintenance	§ 57.5066(c)	1 year after date maintenance performed.
Annual training provided to potentially exposed miners	§ 57.5070(b)	1 year beyond date training completed.
Sampling method used to effectively evaluate mine particulate concentration, and sample results	§ 57.5071	5 years from sample date.

(b)(1) Any record listed in this section which is required to be retained at the mine site may, notwithstanding such requirement, be retained elsewhere if the record is immediately accessible from the mine site by electronic transmission.

(2) Upon request from an authorized representative of the Secretary of Labor, the Secretary of Health and Human Services, or from the authorized representative of miners, mine operators shall promptly provide access to any record listed in the table in this section.

(3) A miner, former miner, or, with the miner's or former miner's written consent, a personal representative of a miner, shall have access to any record required to be maintained pursuant to § 57.5071 to the extent the information pertains to the miner or former miner. Upon request by such person, the operator shall provide the first copy of such record requested by a person at no cost to that person, and any additional copies requested by that person at reasonable cost.

(c) Whenever an operator ceases to do business, that operator shall transfer all records required to be maintained by this part, or a copy thereof, to any successor operator who shall receive these records and maintain them for the required period.

BILLING CODE 4510–43–P

Appendix to Preamble—Background Discussion—MSHA's Toolbox

Note: This Appendix will not appear in the Code of Federal Regulations. It is provided here as a guide.

PRACTICAL WAYS TO REDUCE EXPOSURE TO DIESEL EXHAUST IN MINING - - A TOOLBOX

U.S. Department of Labor
Alexis M. Herman, Secretary

Mine Safety and Health Administration
J. Davitt McAteer, Assistant Secretary

Andrea M. Hricko, Deputy Assistant Secretary

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ACKNOWLEDGEMENTS

The Mine Safety and Health Administration (MSHA) held a series of workshops in the fall of 1995 to obtain input from the mining community on ways of reducing miners' exposure to diesel particulate matter from the exhaust of diesel engines.

MSHA thanks those who attended the workshops and willingly shared their ideas on practical ways to reduce exposure to diesel emissions in mining. These practical ideas have been utilized in producing this "Toolbox." A key objective of the toolbox is to facilitate the exchange of practical information on ways to reduce miner exposure to diesel exhaust emissions.

Thanks are also extended to former U.S. Bureau of Mines scientists, from whose diesel-related publications the text of this handbook draws, and to Robert Waytulonis, Associate Director of the University of Minnesota's Center for Diesel Research.

Credit is given to the following MSHA staff for their efforts in organizing the Diesel Exhaust Workshops, their role in selecting pertinent quotations from the workshop transcripts, and in contributing to or reviewing this manual: Kathy Alejandro, Janet Bertinuson, Teresa Carruthers, Jerry Collier, James Custer, George Dvorznak, Guy Fain, Ron Ford, Don Gibson, Hal Glassman, Jerry Lemon, Pamela King, James Kirk, Jon Kogut, Cheryl McGill, William McKinney, Ed Miller, Charlotte Richardson, Bryan Sargeant, Erik Sherer, Pete Turcic, and Sandra Wesdock. Thanks also to Liz Fitch and Mike Doyle for their help in reviewing early drafts, to Todd Taubert for help with the section on lugging, to Reggie McBee and Bria Culp for editorial support, to Anne Masters for graphic design support, and to Bill West for internet conversions.
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In addition, MSHA thanks other segments of the mining industry that provided comments for consideration in the Toolbox.

Andrea Hricko, Deputy Assistant Secretary of MSHA, provided guidance in organizing the Diesel Workshops and worked closely with Winthrop Watts of the University of Minnesota, and Thomas Tomb, Chief of MSHA's Dust Division, as well as with Robert Haney and George Saseen of MSHA's Office of Technical Support, in creating this "Toolbox." Thanks to Peter Galvin for consolidating the final draft while on detail to MSHA from the Office of the Solicitor and to Keith Gaskill for shepherding the "Toolbox" through to publication.

Special thanks to Winthrop F. Watts, Jr., Ph.D., of the University of Minnesota, Center for Diesel Research, for conceptualizing the "Toolbox" and for writing the first drafts of this manual under contract to the Mine Safety and Health Administration.

HOW TO USE THIS PUBLICATION

Who should use this publication?

If your mine uses diesel-powered equipment, or is contemplating its use, you will find this Toolbox to be a useful guide. So too will those who help mine operators select or maintain mining equipment. The Toolbox can be read cover-to-cover as a basic reference, or used as a troubleshooting guide by diesel equipment operators and mechanics. Some knowledge of engines is assumed, although a glossary is provided.

Is this only of interest to underground mines?

No. While some sections are of special interest only to underground mines (e.g., ventilation), most of this publication is of value to surface mines as well.

Is the Toolbox useful in any type of mining?

Yes. The ideas and concepts are just as relevant in metal and nonmetal mines as they are in coal mines, and many of the controls described are available to operators in both sectors.

How can I find what I need quickly?

The Table of Contents on the first page of this handbook can be used to quickly locate a topic of interest. Technical terms or materials are discussed or referenced in appendices.

If I follow the recommendations in the Toolbox, will I be in compliance with MSHA requirements?

This publication is NOT a guide to applicable Federal or State regulations on the use of diesel engines, or the measurement or control of their emissions on mining property. Selection of an approach from the toolbox must be made in light of the need to comply with such requirements. Appendix D references some of the requirements which should be consulted. Please contact your local MSHA office if you have any questions about applicable requirements.

As of the date of this Toolbox printing, MSHA is making final decisions on proposing some additional regulations about diesel emissions. These proposed new rules would help the mining community address the risks created by miner exposure to diesel particulate matter—the very small particles that are part of the diesel exhaust. The Agency expects to publish these proposed rules for comment early in 1998. While the requirements that will ultimately be implemented, and the schedule of implementation, are of course uncertain at this time, MSHA encourages the mining community not to wait to protect miners' health. MSHA is confident that whatever the final requirements may be, the mining community will find this Toolbox information of significant value.

Does MSHA want my input on this subject?

MSHA welcomes your suggestions on how to improve future editions of this Toolbox, and information on your experiences in reducing exposure to diesel emissions. Please direct any comments to: Chief, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, P.O. Box 18233, Pittsburgh, Pa. 15236. You may also fax them to 412-892-6928, or e-mail them to chiefpshtc @msha.gov.

Special Note on Regulations Involving the Use of Diesel-powered Equipment in Underground Coal Mines

On April 25, 1997, certain key provisions of MSHA's final rule on the use of diesel-powered equipment in underground coal mines went into effect. Other provisions of that rule will go into effect over the next three years. Some of these regulations require the implementation of particular strategies recommended in this Toolbox.

Since the mining community is still becoming familiar with these requirements, some of them are noted in the text at appropriate places, using italics. MSHA hopes this will serve as a useful reminder for underground coal mine operators, without being distracting to the remainder of the mining community.

A compliance guide for the new underground coal mine diesel regulations, in the form of Questions and Answers, has been prepared by MSHA, and is being widely circulated. While this Toolbox is not a substitute for the compliance guide or a copy of the regulations, neither are the compliance guide or the regulations a substitute for this Toolbox—all three documents will be useful for underground coal mine operators and miners.

INTRODUCTION

The Problem

Diesel engines are widely used in mining operations because of their high power output and mobility. Many mine operators prefer diesel-powered machines because they are more powerful than most battery-powered equipment and can be used without electrical trailing cables which can restrict equipment mobility. Underground coal and metal and nonmetal mines currently use approximately 10,000 diesel machines and about 35 percent of these are used for heavy-duty mining production applications. The use of diesel equipment in mining is on the rise, as described by speakers at a series of Workshops on Controlling Diesel Emissions sponsored by MSHA in the fall of 1995:

"In 1985, we had a total mine horsepower of 6,851 horsepower. Today, in 1995, our horsepower has risen to 14,885 horsepower in the mine."

—David Music,
Akzo Nobel Salt's Cleveland Mine

"...Today we have over a hundred pieces of diesel equipment, large and small, anywhere from a Bobcat to large section scoops, generators, welders, compressors, trucks that are used on open highways, and diesel trucks."

—Forrest Addison,
UTAH Coal Miner (UMWA)

The estimated distribution of diesel equip-ment in mining is shown in Table 1. An estimated 30,000 miners work at underground mines using such equipment and approximately 200,000 miners work at surface operations using such equipment.

Table 1. Estimated Distribution of Diesel Equipment

	Mines Using Diesel Engines			
	Underground		Surface	
Type	#Mines	#Engines	#Mines	#Engines
Coal	180	2,950	1,700	22,00
Metal and Nonmetal	250	7,800	10,500	97,000
Totals	430	10,750	12,000	119,000

There is a downside, however, to the use of diesel equipment, especially in the underground mining environment. The problem is the potential acute and long-term health effects of exposure to various constituents of diesel exhaust, which consists of noxious gases and very small particles.

The gases in diesel emissions include carbon monoxide, carbon dioxide, oxides of nitrogen, sulfur dioxide, aromatic hydrocarbons, aldehydes and others. MSHA sets limits on miner exposure to a number of these gases. These limits are specified in Title 30 CFR § 75.322 and § 71.700 for underground and surface coal mines and § 57.5001 and § 56.5001 for underground and surface metal and nonmetal mines.

The particles in diesel emissions are known as "diesel particulate" (DP), or "diesel particulate matter" (DPM). Diesel particulate matter is small enough to be inhaled and retained in the lungs. The particles have hundreds of chemicals from the exhaust adsorbed (attached) onto their surfaces.

The mining community is very familiar with the specific hazards long associated with other particulates of respirable dimensions–like coal mine dust and dust that contains silica. A recent body of evidence, based on studies of air pollution, suggests that exposure to smaller particles (including those present in diesel exhaust) is likewise associated with increased rates of death and disease. Specific evidence has also been accumulating that exposure to high levels of DPM can increase the risk of cancer. In 1988, the National Institute for Occupational Safety and Health recommended that whole diesel exhaust be regarded as a "potential occupational carcinogen," and that reductions in workplace exposure be implemented to reduce cancer risks. In 1989, the International Agency for Research on Cancer declared that "diesel engine exhaust is probably carcinogenic to humans." In 1995, the American Conference of Governmental Industrial Hygienists (ACGIH) added DPM to its "Notice of Intended Changes" for 1995-96, recommending a threshold limit value (TLV®) for a conventional 8-hour work day of 150 micrograms per cubic meter (150 $\mu g/m^3$).

Note on Diesel Particulate Matter Measurements: Microgram v. Milligram

In this Toolbox, measurements of DPM are expressed in micrograms (μg) per cubic meter of air. A microgram is one millionth of a gram. However, in many references, you may see the DPM measurements expressed as milligrams (mg) per cubic meter of air. A milligram is one thousandth of a gram.

1 $\mu g/m^3$=1 milligram per cubic meter of air
1 $\mu g/m^3$=1 microgram per cubic meter of air

1 milligram=1,000 micrograms. So if you want to convert from milligrams to micrograms, multiply by 1000–or move the decimal point three places to the right.

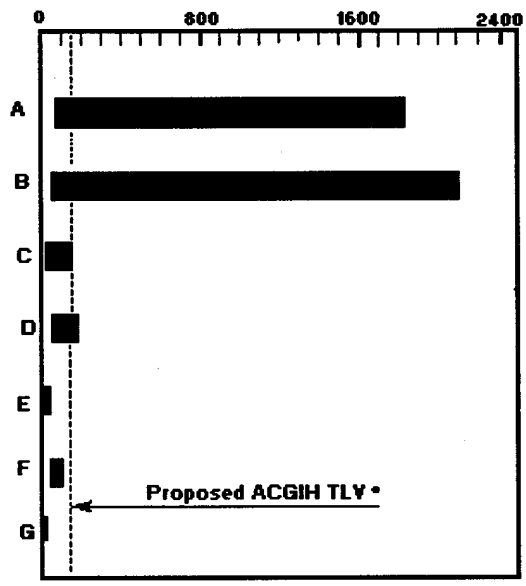
For example, 0.15 mg/m^3=150 $\mu g/m^3$.

Many non-mining workplaces where diesel equipment is used have levels of DPM well below the recommended ACGIH TLV®.In contrast, studies conducted by various scientific researchers demonstrate that exposures to DPM in mining environments can be significantly higher than exposures in the ambient air or in other workplaces.

Figure 1 provides a rough visual picture of the range of DPM exposures of miners, as compared with the range of exposures of other groups of workers who routinely work with diesel-powered equipment. As can be readily seen, the range of exposures in mining environments are significantly higher than in other environments.

Figure 1. Diesel Particulate Exposures in Several Industry Segments

Range of Average DPM Exposures, $\mu g/m^3$.



A=Underground Metal and Nonmetal Mine
B=Underground Coal Miners
C=Surface Miners
D=Railroad Workers
E=Truck Drivers
F=Dock Workers
G=Ambient Air (Urban)

Table 2 provides additional detail about the levels of exposure in U.S. mines. The higher concentrations in underground mines are typically found in the haulageways and face areas where numerous pieces of diesel equipment are operating, or where insufficient air is available to ventilate the operation. In surface mines, the higher concentrations are typically associated with truck drivers and front-end loader operators.

Table 2. Measured Full-Shift Diesel Particulate Matter Exposure in U.S. Mines

Type	Range of exposure, mg/m^3	Mean exposure, mg/m^3
Surface	9-380	88
Underground Coal	0-3,650	644
Underground Metal and Nonmetal	10-5,570	830

In 1988, MSHA's Advisory Committee on Diesel-Powered Equipment in Underground Coal Mines recognized a number of risks related to the use of diesel-powered equipment in such mines, including the potential risks of exposing miners to diesel emissions. The Committee made recommendations to address its concerns.

Since that time, MSHA has taken several actions relative to diesel exhaust. In 1989, MSHA proposed "air quality" regulations which would, among other things, set stricter limits on some diesel exhaust gases. These regulations remain under review. In 1996, after notice and comment, MSHA issued final regulations for the use of diesel-powered equipment in underground coal mines. These rules will go into effect over a 3-year period. And in response to a specific recommendation of the Advisory Committee that, "The Secretary (of Labor) should set in motion a mechanism whereby a diesel particulate standard can be set...", MSHA is developing a proposed rule toward that end.

There are some cases where alternative power sources (e.g., electricity or batteries) may be the solution. But when diesel engines are used, the mining community needs to understand the potential health risks they present and take steps to reduce the hazards.

"...We're very dependent on diesel engines. At the same time, air quality in the mine is very important to IMC. We realized a long time ago that it affects both miner health and morale, and for us morale and productivity go hand in hand. So beginning in the 1970s we consciously undertook a program of improving our air quality...."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"...Of all the health issues that we're dealing with in the mining industry, this issue is at the top of the list...As I travel across this country, I hear more about exposure to diesel exhaust than any other single issue in the mining industry."

—Joe Main,
United Mine Workers of America

Addressing the Problem:

The Experience of the Mining Community

In 1995, MSHA established an internal working group to explore measures to reduce miners' exposure to DPM. This group organized a series of workshops to solicit input from the mining community. The workshops were designed to discuss the potential health risks to miners from exposure to DPM, ways to measure and limit DPM in mine environments, and regulatory or other approaches to ensure a healthful work environment. These workshops provided a useful forum to exchange views and concerns about limiting diesel exhaust exposure. More than 500 members of the mining community attended these workshops, providing evidence that reducing miners' exposure to diesel exhaust emissions, especially in underground mines, is a high priority for the mining industry.

The experience of the mining community appears to support several conclusions:

- The levels of exposure to DPM in mines depend upon engine exhaust emissions, the use of exhaust aftertreatment and its efficiency and, particularly in underground mines, ventilation rate and system design.
- Engine emissions are governed by engine design, work practices, duty cycle, fuel quality and maintenance. Reducing engine emissions will decrease the amount of DPM that needs to be controlled by other means and will reduce the exposure of miners.
- There is no single emission control strategy that is a panacea for the entire mining community.
- Diesel engine maintenance is the cornerstone of a diesel emission control program.

A major objective of this publication is to facilitate the exchange of practical information within the mining community on ways to reduce miners' exposure to diesel exhaust emissions. The Toolbox focuses on currently available methods of control as opposed to methods in the research and development stages. Each of the various technologies presented in the Toolbox will assist in reducing or monitoring worker exposure.

Where possible, the Toolbox quotes specific examples of methods tested or used by the mining industry to reduce exposure to diesel emissions. These quotations are taken directly from public transcripts of the 1995 MSHA workshops, and were selected to provide a representative sample of views expressed. All quotations are offset from the main text in bold lettering. The Toolbox also draws extensively from diesel-related publications prepared by former U.S. Bureau of Mines scientists. Please note that key words and phrases are highlighted in **bold** type for easy reference. [ ] brackets are used to insert explanations not found in the original quotation, "..." are used to indicate that words were removed to make the quote shorter.

MSHA hopes that the mining community will benefit from the exchange of this practical information and will take steps to reduce miners' exposure to diesel emissions, utilizing the variety of techniques described in this publication and other methods as they are developed. The Agency encourages an ongoing exchange of information on strategies to further reduce exposure to diesel emissions and to protect the health of miners.

The quotations cited in this publication do not necessarily represent the views and/or policies of MSHA, nor of the organizations or companies at which the speakers work (or worked). MSHA recognizes that some affiliations have changed since the workshops. Names and affiliations at the time of the workshop are used. Finally, reference to specific manufacturers and/or products does not imply endorsement by MSHA or the U.S. Government.

The Reason for a "Toolbox" Approach

This publication introduces a "toolbox" approach to reducing miners' exposure to diesel exhaust emissions. A toolbox offers a choice of tools, each with a specific purpose. One tool after another may be used to find a solution to a problem or several tools may be tried at the same time.

Reducing exposure to diesel emissions lends itself to a toolbox approach because no single method or approach to reducing exposure may be suitable for every situation. Examples of the "toolbox" approach to reducing exposure to diesel emissions in a mine were described at the 1995 MSHA workshops:

"Since the mid-1980s Homestake has initiated a number of work steps and tests to control the diesel emission components, and these are engine alternatives, maintenance, exhaust aftertreatments, fuels, dilution ventilation and engine type....To summarize our experiences with diesel particulate matter, we've had good luck with respirators, maintenance and fuels. We've had mixed results with diesel particulate filters and with airflows. And results are still pending on engine type. We are going to continue working in all of these areas."

—John Marks,
Homestake Mining Company

"At Galatia a three-point approach is used to ensure safe and healthy diesel operating conditions. First, the mine is designed to provide vast volumes of air to all the active workings... Second, a well-conceived maintenance program strives to maintain optimum engine performance and thereby control diesel exhaust emissions. The maintenance program consists of regularly scheduled replacements of fluids and filters, operating performance evaluations and additional weekly permissibility inspections, a regularly scheduled emissions test...and...a training program to educate maintenance personnel in the engine operating recommendations and requirements. The third point in our approach is the use of control technology...All permissible vehicles...at Galatia use a wet scrubber for initial particulate reduction. Additionally, 10 Ramcars that are normally assigned to production units have been retrofitted with the pleated paper diesel particulate filter. Additional vehicles are being retrofitted during equipment rebuilds."

—Keith Roberts,

Kerr McGee's Galatia Mine

"...Ventilation is an important control.... Through clean-burning diesel engines, low sulfur fuels, and effective aftertreatment technology, we can reduce emissions at the engine."

—Jeff Duncan,
United Mine Workers of America

The Toolbox is divided into nine sections—

- use of low emission engines
- use of low sulfur fuel, fuel additives and alternative fuels
- use of aftertreatment devices
- use of ventilation
- use of enclosed cabs
- diesel engine maintenance
- work practices and training
- fleet management
- respiratory protective equipment

Each section covers specific methods that are being used to reduce emissions or exposure. Use of these methods will be determined by the specific circumstances found at each mine.

"There is no single control that is a panacea for all the emission problems. Due to differences in the mine design and the mine geology, the equipment types and sizes, and their duty cycles...different types of controls are used."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"Because of the interrelationship of the various control technologies on workers' exposures, mine operators often use a combination of controls....These may include

ventilation...reducing engine emissions or utilizing aftertreatment devices."

—Robert Haney,
Mine Safety and Health Administration

The Toolbox

Low Emission Engines

Low emission engines are produced by engine manufacturers to meet increasingly stringent Environmental Protection Agency (EPA) regulations. Mine operators can benefit from discussing the condition of their diesel fleet with diesel manufacturers prior to ordering new diesel engines. Moreover, benefits can be gained by replacing older model engines that require more maintenance with newer engines. In addition, lower emissions and greater machine availability (i.e., the machine does not break down as often) are normally achieved with a newer type engine.

Low-emission engines typically operate at high fuel injection pressures which provide more efficient and complete combustion of fuel. These engines are frequently turbocharged to optimize power, performance, and emissions. After-cooling (cooling intake air that is compressed and heated by the turbocharger prior to induction into the combustion chamber) is used to reduce oxides of nitrogen (NO_x). Electronic engine control is another technological improvement, which optimizes the fuel-to-air ratio resulting in lower emissions.

As a result of EPA regulations in 1988, "on-highway" heavy duty diesel engine emissions have been significantly reduced. Emissions standards have driven particulate emissions levels for such engines from 0.6 grams per horsepower-hour (g/hp-h) in 1988 to less than 0.1 g/hp-h in 1994, and oxides of nitrogen emissions from 10.7 g/hp-h in 1985 to 5.0 g/hp-h in 1991. The EPA regulations provide a schedule for continued improvement. Pursuant to an agreement with the engine industry, the EPA has also proposed a new round of emission reductions in highway engines to begin with models produced in 2004.

In 1996, the EPA established emission regulations for almost all land-based non-road ("off-highway") diesels, such as construction equipment. These regulations specify emission levels that non-road engines must meet depending on the horsepower of the engine. Currently, the regulations affect only non-road engines from 175-750 horsepower. For this category, the 1996 standard reduces particulate emissions from as high as 1.0 g/hp-h to 0.4 g/hp-h and oxides of nitrogen emissions to below 6.9 g/hp-h. The rule phases in limits for other horsepower engines. Modern engines developed for non-road use are expected to provide the mining industry with a greater choice of low emission engines for use underground. It should be noted that diesel engines used in underground coal mines are primarily indirect injection engines (pre-chamber), which in some cases could meet certain EPA non-road requirements. In September 1997, pursuant to an agreement with the engine industry, the EPA proposed a new round of emission reductions in non-road engines to begin with models produced in 1999.

Engines that have been approved or certified by agencies such as MSHA, EPA or the state of California generally have lower emissions. Larger on-highway type engines built after 1988 and non-road engines built after 1996 have been designed to produce lower emissions to meet the stringent on-highway emission standards discussed above. For engines approved under Part 7, subpart E for underground mining applications, MSHA determines a particulate index (PI). The PI indicates the quantity of ventilation air required to dilute particulate emissions from a specific engine operated over a test cycle to a concentration of 1 milligram (1000 micrograms) per cubic

meter of air. Mine operators and machine manufacturers of mining equipment can use the PI in selecting and purchasing engines. The lower the PI number, the lower the particulate emissions for the same horsepower engine. Mine operators may also use the PI to roughly estimate each engine's contribution to the mine's levels of total respirable dust in coal mines or the levels of diesel particulate in metal/nonmetal mines. In underground coal mines, all engines must be Msha-approved engines by November 25, 1999.

"...Diesel engines continue to become cleaner; there will be more emission legislation out there in the future.... Diesel engine fuel efficiency has improved at the same time; power density has continued to climb; diesel engine life has steadily increased."

—Peter Woon,
Cummins Engine

"In over the road truck engines, there has been about a 90 percent reduction in just going to cleaner engine technologies, and these are results that apply to well-maintained, new engines..."

—David Hofeldt, Ph.D.,
University of Minnesota

"Now, this class of engines [modern, low emission engines] has high horsepower, typically from 250 hp up to 500 hp, so they are not suitable for all types of mining equipment.... They have the advantage of producing 80-90 percent less particulate than the conventional naturally-aspirated prechamber engines. They consume on the order of 25 percent less fuel. In the case of the Cat 3306 swirl, it's a drop-in replacement for some of the older 3306 technology."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"[Start] with buying a clean engine as opposed to some of these polluting engines that dump out all kinds of NO_x's and carbon monoxide. Buy the cleaner engines..."

—Joe Main,
United Mine Workers of America

"We felt that the problems we had with filters...were so severe and caused so many problems that it was a lot better to clean up the source, and so we got cleaner engines. We are using one manufacturer's engine. We're getting another—in fact, we're getting one of the new...Detroit Diesel engines with electronic controls just for that reason in the next machine we buy.... Utilization of highway-type diesel engines in our replacement engine program is providing us cleaner burning, reliable engines at a lower cost than the regular mining-type engines and a post-combustion device..."

—Ray Ellington,

Morton Salt

USE OF LOW SULFUR FUEL, FUEL ADDITIVES AND ALTERNATE FUELS

In general, emissions can vary from engine to engine and across different engine load conditions, even though all engines are operated using the same basic type of fuel and fuel additive package. Variations occur because the details of the combustion process differ with engine design and methods used to control fuel to the engine as well as with the duty cycle of the engine. Therefore, the following comments on fuel composition and additives should be viewed as generally applicable to an average diesel engine operated over a range of duty cycles.

The quality of the **diesel fuel** influences emissions. Sulfur content, cetane number, aromatic content, density, viscosity, and volatility are interrelated fuel properties which can influence emissions. Sulfur content can have a significant effect on diesel particulate matter emissions. In addition, it affects sulfur oxide (SO_x) emissions, all forms of which are toxic. Moreover, SO_x emissions can poison catalytic converters, and the continued use of high sulfur fuel will contribute to increased piston ring and/or cylinder liner wear.

Cetane number affects all regulated pollutants, and fuel aromatic content affects DPM and nitrogen oxides (NO_x). Therefore, it is important to provide fuel distributors with specific fuel specifications and recommended property limits when purchasing diesel fuel. Table 3 lists recommended property limits for diesel fuel. However, some of the property limits listed may not be commercially available in all areas at this time.

Table 3. Recommended Property Limits for Diesel Fuel

Property	Limit
Cetane number	>48
Aromatic Content	<20%
90% distillation temperature	<600° F
Sulfur content	<0.05% by mass

Use of **low sulfur diesel fuel** (< 0.05 percent sulfur) reduces the sulfate fraction of DPM emissions, reduces objectionable odors associated with diesel use, and allows oxidation catalysts to perform properly. Another benefit from the use of low sulfur fuel is reduced engine wear and maintenance costs. Fuel sulfur content is particularly important when the fuel is used in low

emission diesel engines. Low sulfur diesel fuel is available nationwide due to EPA regulations. *As of April 25, 1997, diesel-powered equipment in underground coal mines must use low-sulfur fuel.*

"...There is an ASTM-975-93 specification [on low sulfur fuel] from the EPA. All you have to do is to specify that fuel on your purchase order, and this is the fuel they have to deliver. You just have to insist on it."

—Norbert Paas,
Paas Technology

"...Homestake used a straight No. 2 diesel fuel with up to 0.5 percent fuel sulfur until 1991 when we switched to a premier No. 2 with 0.12 percent fuel sulfur. Since about the start of 1995 we've gone to the 0.05 percent No. 2."

—John Marks,
Homestake Mining Company

"For fuel we use a low sulfur diesel fuel that typically averages 0.041 percent sulfur and a cetane number of 54."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

The cetane number of U.S. diesel fuel can range between 40 and 57. Increased cetane number and volatility, (as measured by a fuel's distillation temperature characteristics) reduces both hydrocarbon emissions and the tendency to produce white smoke, which occurs when an engine is either cold or under low load. White smoke is mostly water vapor, unburned fuel and a small portion of lube oil. Fuel with a cetane number greater than 48 and a seasonably adjusted cloud point reduces cold-start hydrocarbon emissions, odor, noise, irritant and fuel system wax separation problems.

"...Cetane number is very important—needed for good starting, good combustion and for emission performance of engine.... When cetane number is improved, either by cetane additive or base fuel composition...so that cetane number is improved from 45 to 55, there's a dramatic reduction in hydrocarbons...and...in carbon monoxide...and more than 10 percent reduction in particulates"

—Kashmir Virk,
Texaco, Inc.

Typical No. 2 diesel fuel in the U.S. has an aromatic hydrocarbon content of 20 to 40

percent. Reducing the aromatic hydrocarbon content and the 90 percent distillation temperature of the fuel reduces the soluble organic fraction of DPM and NO_x emissions.

A variety of **fuel additives** are available to reduce emissions. For example, cetane improvers increase the cetane number of the fuel, which may reduce emissions and improve starting. Oxygenated additives increase the availability of oxygen needed to oxidize hydrocarbons in the fuel. Detergents are used primarily to keep the fuel injectors clean. Dispersants or surfactants prevent the formation of thicker compounds that can form deposits on the fuel injectors or plug filters. Lubricity additives are similar to corrosion inhibitors and are frequently added to fuel by petroleum producers. There are also stability additives which prevent the fuel from breaking down when it is stored for long periods of time. Only additives registered by the EPA are recommended for use, to ensure that no harmful agents are introduced into the mine environment. *As of April 25, 1997, only diesel fuel additives that have been registered by the epa may be used in diesel-powered equipment in underground coal mines.*

"...There's a variety of different types of compounds you can add that contain oxygen. Typical diesel fuel doesn't have much oxygen.... [When significant quantities of oxygenates are added to fuel, the oxygen content of the fuel is increased], ...You end up seeing...reductions in particulate emissions, hydrocarbon emissions and CO..., and NO_x levels may increase or decrease slightly depending on the engine and load cycle."

—David Hofeldt, Ph.D.,
University of Minnesota

"We took a very serious look at metal additives...for on-highway trucks.... We–Caterpillar–and the industry decided not to go that way...[One] concern was [that] these chemicals may actually cause health effects in their own rights..."

—John Amdall,
Caterpillar

"...Detergent-type additives in the fuel primarily prevent coking or fouling [partial plugging] of the injectors. And if you don't use a detergent additive, pretty much all your emissions go up over time... [However] just using a detergent is not going to make up for an engine that's wearing out or isn't properly adjusted or maintained. ...Metals as a group reduce the visible smoke output. ...The problem with metal additives is they show up on the particulate. Metals don't burn up. ...Metals are known to have some biological effects just like diesel particulates would. So I would not recommend that you [use] any of the metal additives for reducing [diesel particulates]."

—David Hofeldt, Ph.D.,
University of Minnesota

Another promising control technology is **alternative fuel**, especially biodiesel fuels made from methyl esters derived from soybeans, although these are not readily available on the market.

This type of fuel contains about 10 percent oxygen, has a high cetane number, and a much higher flash point. These properties improve combustion, starting, performance and safety characteristics of the fuel. To maximize the reductions in exhaust emissions, it is recommended that biodiesel fuels be used with a diesel oxidation catalyst. EPA has certified a biodiesel brand known as Envirodiesel®, which is being used in combination with diesel oxidation catalyst by urban bus transit operators.

"The Bureau of Mines demonstrated that the combination of methyl soyate fuel and modern diesel exhaust catalyst is a passive control scheme that is very effective.... [In tests conducted at the Homestake Gold Mine], a Wagner load-haul-dump was operated using a 100 percent methyl soyate fuel and a modern catalyst. Compared to baseline emissions, a 70 percent reduction in the ambient levels of [diesel] particulate matter was achieved...."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"...Homestake cooperated with the [former]Bureau of Mines to successfully evaluate a soy methyl ester [biodiesel] fuel...miner acceptance was good, and the leftover [biodiesel] fuel was quickly used by our miners."

—John Marks,
Homestake Mining Company

USE OF AFTERTREATMENT DEVICES

Water scrubbers are basically a safety device used on "permissible" equipment in underground mines. Water scrubbers perform three functions: cool exhaust gases to safe temperatures, arrest sparks and arrest flames.

The exhaust airflow from a diesel engine passes through water, making direct contact with the water. This direct contact with the water cools the air and quenches flames and sparks. Although not intended as an emission control device, scrubbers have been shown to remove about 30 percent of DPM from an engine's exhaust stream. Moreover, because water scrubbers cool the exhaust gases, they enable the equipment to be fitted with high efficiency paper filters that reduce DPM. Water scrubbers have no signifcant effect on gaseous emissions.

"The water scrubber...is not an emission control, it's a safety control, but incidentally, it will remove 20 to 30 percent of the particulate.... They require frequent maintenance."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"Water scrubbers are not a pollution control, they are a fire control system..., but scrubbers create condensation in the air and increase mine air humidity...and with several pieces of diesel equipment using water scrubbers [on a section], the increased heat effect because of the humidity is a significant concern...."

—Joe Main,
United Mine Workers of America

The **exhaust location** can make a big difference in the concentration of pollution to which equipment operators and nearby miners are exposed. The location should be such that exhaust is directed away from the vehicle operator. The exhaust gas can be directed across the radiator, thus providing immediate dispersal by the radiator fan, or an exhaust extender can be used to **redirect the exhaust away** from the operator or nearby miners. These workers can be exposed to significant concentrations of diesel exhaust constituents before they can be diluted, even at surface mines. **Exhaust dilutors** can also be used in vented headings and tunnels.

"Wouldn't it be nice if we could take that exhaust and put it somewhere else on the vehicle, so then, at the very least, the Ramcar operator is not subject to his own vehicle's emissions?"

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

Exhaust filtration devices capture DPM from the exhaust before it enters the mine atmosphere. Filters used to capture particulate or other exhaust constituents are called **after-treatment devices**.The most commonly used exhaust filtration devices are: **disposable diesel exhaust paper filters and catalyzed or uncatalyzed diesel particulate ceramic filters**.

Particulate control systems using these components typically have removal efficiencies ranging between 50 and 95 percent; that is, they remove 50 to 95 percent of the particulate. It is important to note that an aftertreatment device that is 90 percent efficient is twice as effective for removing DPM as an 80 percent efficient device: only10 percent instead of 20 percent of the particulate would remain in the exhaust.

The **disposable diesel exhaust filter** is similar to the intake air filter used on over-the-road haulage vehicles. It is placed downstream of a water scrubber or a water jacketed heat exchanger, capturing DPM from the exhaust stream. The filter is discarded after being loaded with DPM. Some states such as Pennsylvania require the loaded filters to be bagged and brought to the surface for disposal.

Tests of the disposable diesel exhaust paper filters at two underground coal mines resulted in up to 95 percent reduction in DPM. Utilization of different filtration media and careful application of these filters combined with cleaning and reuse can extend the life of the filters. When used with a water scrubber, proper maintenance of the water level is necessary to eliminate the risk of hot exhaust gases igniting the filter.

"...Disposable paper filters are installed on the Ramcars such that the exhaust first passes through the water scrubber, then through a water trap or baffle system to prevent water droplets from being carried by the exhaust stream to the filter, and then finally through the low-temperature paper filter. There's an exhaust temperature shutdown installed in front of the paper filter to prevent the exhaust gases from reaching 212o F, which is the maximum safe operating temperature of the filter. There's a back pressure gauge mounted in the operator's cab to help them know when the filters need to be changed out."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"Today, the best strategy to use on a diesel Ramcar is to use the changeable paper filters that many mining companies are currently using."

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

"...the Ramcar operators quickly accepted the filters and wanted them installed on all the face equipment. We have since installed the disposable diesel exhaust filters on our Wagner 25xs, Teletrams and Petitto Mule.... ...We typically get about six hours off the Ramcar and Petitto Mules. On our Wagner systems we average approximately four hours of service life...."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"...In our experience, the lifetime of the filters has varied anywhere from 8 hours to 32 hours–provided that the engine on which the filter is installed is tuned properly so that it is not putting out too much soot. [The actual time between filter changes will vary depending upon the vehicle and engine's state-of-maintenance, duty cycle and other parameters.]"

—Bob Waytulonis,
Center for Diesel Research,
University of Minnesota

Catalyzed or uncatalyzed ceramic diesel particulate filters currently available can reduce DPM emissions from 60 to 90 percent. Exhaust passes through the ceramic or metallic diesel particulate filter which traps the particulate matter. As exhaust continues to pass through the filter, filtering continues, and the filter slowly becomes clogged with DPM. Clogging increases the exhaust back pressure which can lead to engine damage unless the exhaust back pressure is lowered by cleaning the filter.

Vehicles which have sufficiently high exhaust temperature (at least 325oC, 25 percent of the time) can automatically clean the filter using a process called autoregeneration or self-cleaning. During autoregeneration the high exhaust temperature causes the trapped DPM to ignite and burn, thus reducing the exhaust back pressure on the engine and allowing more DPM to be trapped. For other vehicles, regeneration can be assisted by the application of a catalyst to the filter, which lowers the regeneration temperature, or by the use of on- or off-board regeneration systems.

"There are approximately 1,000 diesel particulate filters presently [being used] on mining vehicles throughout the world."

—Dale McKinnon,
Manufacturers of Emission Control Association

"In 1989 Homestake initiated a test on ceramic wall flow diesel particulate filters. Eight units were tested on a Cat 3306, different loaders from three different suppliers. One failed right away and was replaced by the supplier. Five lasted on the average about 2,000 hours, and two went over 3,000 hours. Miner acceptance was good when the filters were working properly."

—John Marks,
Homestake Mining Company

Although ceramic diesel particulate filters are useful, they may present problems for some users.

"...Number one, while ceramic filters give good results early in their life cycle, they have a relatively short life, are very expensive and unreliable. Number two, other post-combustion devices are not readily available for the larger horsepower production equipment we are currently using. When evaluated for lower horsepower support equipment, they appear to be very costly with no proven reliability..."

—Ray Ellington,
Morton Salt

Oxidation catalytic converters (OCCs) are used to reduce the quantity of carbon monoxide and hydrocarbons (including harmful aldehydes) in diesel exhaust. Oxidation catalytic converters also

decrease the soluble organic fraction of DPM as well as gas phase hydrocarbons, which can reduce DPM emissions by up to 50 percent. The soluble organic fraction of the DPM exhaust contains known carcinogenic compounds such as benzo(a)pyrene and other polycyclic aromatic hydrocarbons.

Use of low sulfur fuel (<0.05 percent sulfur) with OCCs is critical because air quality is harmed when fuel containing moderate or high sulfur (>0.1 percent) is used. An OCC oxidizes sulfur dioxide to form sulfates which increase particulate emissions. OCCs can also oxidize nitric oxide to more harmful nitrogen dioxide. Modern catalysts are formulated to minimize the production of sulfate particulate matter and nitrogen dioxide, provided they are used with high quality low sulfur fuel.

The OCC should be located as close as possible to the exhaust manifold to ensure maximum exhaust gas temperature. The catalyst formulation and its operating temperature are critical factors in converter performance. The temperatures required for 50 percent conversion of carbon monoxide and hydrocarbons are typically about 370oF and 500oF , respectively. As higher exhaust gas temperatures are attained, conversion efficiency increases. The use of high sulfur fuel reduces the life of catalytic converters. New catalyst technology and the availability of low sulfur fuel make the use of OCCs on underground mine vehicles an attractive tool for reducing diesel particulate emissions.

"There are also over 10,000 oxidation catalysts that have been put into the mining industry over the years. ...Sulfation is key in particulate control; you don't want a catalyst to cause any oxidation of the sulfur. I remem-ber once I was in India, and there was a complaint that they put a catalyst on and they were saying it caused smoke. And it did, a lot of smoke. I took a fuel sample and the fuel had 2.2 percent sulfur in it, not 0.25 percent. ...Engine, fuel and aftertreatment control technology must work together."

—Dale McKinnon,
Manufacturers of Emission Control Association

"The Homestake Mine has had extensive experience with oxidation catalysts.... We have always had them on our diesel units. And I know there's been a controversy on whether they might improve the work environment or harm it, but with low sulfur fuel I don't think there's any doubt they are a benefit. They oxidize the CO to CO_2, and they burn off some of the unburned hydrocarbons and some of the components of diesel exhaust. We like them. The [modern] catalytic purifiers, to my knowledge, limit the NO-to-NO_2 conversion, and with the low sulfur fuel you don't get the sulfates coming out. So we think we're better off with them."

—John Marks,
Homestake Mining Company

Dry system technology. An alternative to water scrubbers for meeting the exhaust gas cooling, spark arresting, and flame arresting requirements is the Dry System Technology (DST®). With this technology, the exhaust gas does not come into direct contact with cooling water, but is indirectly cooled by a water-cooled heat exchanger such as a tube and shell heat exchanger. This cooling process does not involve the evaporation of water. Spark and flame arrest are provided by mechanical means.

The DST® also includes a water-jacketed oxidation catalytic converter and a disposable diesel exhaust filter to reduce diesel emissions. The oxidation catalytic converter is located upstream of the water-cooled heat exchanger. Exhaust then passes through the water-jacketed heat exchanger, a paper filter and a flame arrestor. This system reduces diesel particulate by 95 to 98 percent. The DST® includes a complete set of diagnostic gauges to monitor system performance. The DST® has been approved by MSHA under 30 CFR Part 36. It can be used in coal or gassy metal and nonmetal mines where permissible equipment is required. In addition, the heat exchanger technology could be applied to nonpermissible engines in order to cool the exhaust gases so that disposable diesel exhaust filters (paper filters) could be used to reduce particulates.

"This system [the DST®], I think, represents, from everything that I've seen, the state-of-art of the industry...the best technology on the market today.... This gives us the ability for the first time in a long time to change direction and try to solve problems [with exposure to diesel exhaust]."

—Joe Main,
United Mine Workers of America

The DST® has been tried on a number of vehicles retrofitted to use it. "...It was a welding truck, at Shoshone. It was put in November, 1992. That's coming up pretty close to three years. Has operated very successfully; have had no problems. There's a 913 scoop; that's at Twenty-Mile since January, 1994.... We retrofitted a 25X Wagner shield hauler...."

—Norbert Paas,
Paas Technology

USE OF VENTILATION

Today the primary means used to reduce exposure to diesel exhaust pollutants underground **is to dilute exhaust pollutants** with fresh air from the mine's ventilation system. The concentration of pollutants is inversely proportional to changes in ventilation air quantity; that is, as the air quantity increases the pollutant concentrations decrease. The mine ventilation system can work in

conjunction with the other methods of contaminant control such as maintenance, exhaust treatment, etc. Any control system must then be supplemented with checks to ensure that all aspects are working as designed. One way to check the control system is to conduct periodic sampling of diesel contaminants to detect changes in the system.

Mine ventilation systems where diesel engines are operated generally supply between 100 and 200 cubic feet of air per minute per brake horsepower (cfm/bhp). This air quantity is normally sufficient to dilute gaseous emissions from the diesel equipment to applicable standards for those gases. However, MSHA's experience in underground mines has shown that with these air quantities, DPM levels will still range between 200 μg/m3 and 1,800 μg/m3. As a general reference, about 35,300 cfm of air are required to dilute one gram per minute of DPM to 1,000 $\mu g/m^3$. Therefore, to significantly cause a reduction of DPM concentrations in underground mines through ventilation, it may be necessary to supply air quantities above those currently being used.

There are special ventilation requirements when diesels are used in underground coal mines. When a single piece of diesel equipment is operated, the nameplate airflow must be provided as a minimum airflow requirement. For each individual piece of diesel equipment operating in a coal mine, the approval plate air quantity must be maintained in any working place where the equipment operates, at the section loading point, and in outby entries where the equipment operates. The MSHA regulations also allow the District Manager to add areas where the approval plate air quantity may be required, such as fueling locations. When multiple pieces of diesel equipment are operated, the minimum section airflow is the sum of the nameplate airflows for the individual pieces of equipment. This requirement was developed to reduce the gaseous diesel emissions. However, not all equipment is operated on a continuous basis and some equipment, such as transportation and supply vehicles, may be excluded from this calculation. (Prior to the 1996 diesel powered equipment rule, a 100-75-50 percent guideline was used to establish minimum section air quantity requirements.) Any excluded equipment must be approved by the District Manager and listed in the ventilation plan for the mine. The intent here is to allow for the exclusion of equipment that does not significantly add to the miners' exposure level. These air quantities must be maintained in the last open crosscut of working sections, the intake to longwall sections, and the intake to pillar lines. The multiple unit quantity also applies to the areas where mechanized mining equipment is being installed or removed. Quantities other than the multiple unit formula can be approved by the MSHA District Manager if samples show that such reduced quantity will not result in overexposures.

"...Ventilation can take care, in my opinion, of most diesel equipment in the main haulageway, even in the sub-mains. However, when you approach the face area, you don't have that velocity and that quantity of air; then the control of engine exhaust may be necessary depending on the size of the engine and the concentration."

—Pramod Thakur, Ph.D.,

Consol, Inc.

Metal and nonmetal mines can be ventilated in a variety of ways. In single level mines, working areas are generally ventilated in series. The exhaust of one area becomes the intake for the next area. Multilevel mines may have a separate air split to each level or to several levels. Separation between intake and exhaust air courses is essential to prevent leakage or loss of fresh air. Auxiliary and booster fans should be installed throughout the mine to optimize distribution of workplace airflow.

Changing a mine's ventilation system to reduce pollutant exposure is frequently expensive and may require a long time to implement. Simple changes can include repairing an individual brattice or reducing leaks in an entire brattice line. However, significant improvements in air quality often are achieved only by complex changes such as redesigning the entire mining system to reduce airflow leakage, modifying the main fan installation, or adding a new air shaft.

"The mine ventilation system must be designed to provide and distribute sufficient airflow to areas of the mine where diesel equipment is being used. Typical ventilation rates in metal and nonmetal mines range from 75 to 200 cfm per brake horsepower in use. In coal mines the name plate airflow has been used to determine plan airflow requirements."

—Robert Haney,
Mine Safety and
Health Administration

"Ventilation continues to be an important method of controlling diesel particulate matter concentrations, and our studies have shown that significant reductions can be achieved by changing the ventilation around in the section."

—Jan Mutmansky, Ph.D.,
Pennsylvania State University

"Ventilation still remains the vanguard against diesel emissions. Toward the end of 1992 we reduced overall airflows to cut costs as part of a mine optimization process, and this summer we returned to those airflows. We currently have a mine migration of about 115 cfm/bhp. We designed with the 100 percent rule. We don't use 100 percent, 75 and 50 percent thereafter, although that's the way it sometimes works out. We try and keep all of our diesels on parallel splits as much as possible."

—John Marks,
Homestake Mining Company

"All permissible diesel face equipment is ventilated according to MSHA-required nameplate values. These are usually required to make in excess of 18,000 cfm in the last open break and 40,000 cfm on the section. In normal operation these values are 35,000 cfm in the last open break and 45,000 cfm on the section."

—Chris Pritchard,
Tg Soda Ash Incorporated

"Looking a little closer at ventilation, in one of our larger panels, typically at any one time you'll see three Ramcars at 139 horsepower operating, a roof bolter, a powder wagon and roughly two service vehicles...for more or less a total horsepower of...610. With an air volume of 100,000 cfm, we have an effective air-to-horsepower ratio in an operating panel of 164 cfm. If you look at the entire mine, installed horsepower, the air-to-horsepower ratio is about 95 cfm. New Mexico has a standard of 75 cfm, so we're somewhat better than that."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"We control air flow in the mine using air doors and air walls. ...We will shotcrete or gunite some areas to prevent leakage. We build airwalls throughout the mine using waste rock and used conveyor belt. The rock is piled up half to two-thirds of the way to the back and conveyor belt is cut into strips and pinned to the back overlapping by about six inches. This produces a very efficient air wall in the mine."

—Regina Henry,
Dravo Lime Company

"Our stoppings consist of brattice cloth or waste salt piled to within 10 feet of the roof and brattice cloth. We have auxiliary fans located throughout the mine that mix the gases as they come off the sections. Our main intake ventilates all of the sections in B-bed, then returns to the production shaft. Right now our C-bed is on its own split of air, and we continue to keep it that way. Several years ago when our fans were old and running at a maximum capacity, we decided...to see what we needed to do to build a better ventilation system. We conducted several pressure and air quality surveys, and the results were put into a computer simulation model. From this model, we found out that we definitely needed new fans.... We also decided that when we were developing C-bed, that we did not want to continue with the way we were currently ventilating the mine. In other words, we did not want to have one single split ventilating all the sections. So at that time we sat down and we worked out a way to ventilate each section on its own separate split, which is what most coal mines do. We feel that this will give us a better air quality ... and it will help clear the air out faster."

—David Music,
Akzo Nobel Salt's Cleveland Mine

"...We believe mine design and ventilation is an important...control. The fact of the matter

is, though, that... mine ventilation is not a stand alone system [for reducing exposure to diesel emissions].... "Even coupled with the water scrubber exhaust cooling systems that have become the industry standard, we haven't reduced particulate exposure to [what we would consider] an acceptable level...."

—Jeff Duncan,
United Mine Workers of America

USE OF ENCLOSED CABS

Properly designed and maintained environmentally conditioned cabs can reduce equipment operators' exposure to diesel emissions. Cabs should be pressurized and use high-efficiency particulate air (HEPA) filters. Many surface mines are currently using properly designed environmentally conditioned cabs and some efforts are being made to use enclosed cabs on underground mining equipment. The same principles apply to the use of underground booths designed to protect miners.

Question:
"I recently completed a study of a surface coal mine, and they were using pressurized cabs to minimize exposures.... Has this been given some thought in your design [of Ramcars] at Jeffrey?...."

—Robert Wheeler,
Consultant

Response:
"We may be getting very close to that, because just recently we produced the first Ramcar-type of vehicle ever with a cab, with some climate controls. ...One of the problems with exposure in underground mines is not the operator of the machine. Because of the close confines, it's the people around the equipment and, of course, the pressurized cab does not affect them at all."

—John Smith,
Jeffrey Mining Products

DIESEL ENGINE MAINTENANCE

Engine maintenance is an important part of a mine's overall strategy for reducing workers' exposure to diesel emissions. Without proper maintenance, diesel engines will perform poorly, thus reducing the effectiveness of all other emission control strategies.

"It has been definitively proven, that when engine maintenance is neglected [especially if it involves regulating the fuel and air handling systems of engines] the particulate, and carbon monoxide, and hydrocarbons, all skyrocket."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

"...We had a lack of maintenance on these pieces of diesel equipment. They were running the equipment until they broke down, and they would fix them, and they would run them again until they broke down..."

—Glen Pierson,
Alabama Coal Miner (UMWA)

"We're having problems with respect to maintenance of diesels. We're having problems with untuned diesels. When we go to do longwall moves, we're working in an environment where the blue smoke is so heavy sometimes you can't see. We don't have a good maintenance system. We don't have a good inspection system."

—Joe Main,
United Mine Workers of America

A good preventive maintenance program will maintain near-original performance of an engine, and maximize vehicle productivity and engine life, while keeping exhaust emissions down. Engine maintenance activities which should be performed by mine maintenance personnel include maintenance of the following systems: air intake, cooling, lubrication, fuel injection and exhaust. These systems must be maintained according to manufacturer's specifications and on a regularly scheduled basis to keep the system operating efficiently. Measuring tailpipe CO emissions while the engine is under load provides a good indication when maintenance is required. However, daily checks of engine oil level, coolant, fuel and air filters, water tank, exhaust piping and gauges should be made. *There are very specific requirements for maintenance of diesel equipment in underground coal mines; some are noted below.*

The air intake system removes airborne particles before they enter the engine and cause abrasion of internal engine surfaces. Intake air filters should be replaced when the pressure drop indicator exceeds the manufacturers' specifications, usually 20 to 25 inches of water.
As of November 25, 1997, for diesel-powered equipment used in underground coal mines, intake air filters must be replaced or serviced when the intake air pressure device so indicates, or when the engine manufacturer's maximum allowable air pressure drop level is exceeded.

"...Maintenance is extremely critical.... It takes two days to screw up the engine in the mine

if you're running it without an air cleaner or a clogged air cleaner or if a cleaner was replaced by the wrong cartridge element that allows for some air to bypass the fuel filter."

—Jamie Sauerteig,
Deutz Corporation

"One of the most simplest things in maintenance is the intake air cleaner or filter. You could have emission increases by as much as 300 or 400 percent just having a clogged intake air cleaner."

—Norbert Paas,
Paas Technology

"Maintenance: intake air and exhaust systems are checked at least once each day during their operation. Inspections are completed on a weekly basis. Inspections are done by competent persons assigned by the company to perform that work, and inspections are completed in a well-ventilated area. Results of these daily and weekly inspections are kept in a permanent record book."

—Steve Biby,
Old Ben Coal Company

The **cooling system** directly affects engine emissions by preventing scuffed cylinder walls and pistons, cracked heads, and burned valves. Liquid-cooled engines need to be kept free of mineral deposits and rust to ensure effective heat transfer. Mine water is generally high in minerals and salts, rendering it unfit for use in the cooling system. A 50 percent antifreeze and distilled water solution is optimal. Cooling fans, ducts and cowlings must also be maintained to ensure adequate cooling.

Air-cooled engines discharge heat via cooling fins, and liquid-cooled engines rely on radiators. Be sure to keep cooling fins and radiators undamaged and free of oil and dust to ensure proper heat transfer. Adjust or replace slipping fan and pump belts to ensure proper air and coolant flow, thus avoiding excessive heat buildup.

The **fuel injection system** can be damaged by contaminated fuel. To prevent this damage, fuel filters should be regularly replaced and fuel tanks should be periodically drained and cleaned. To avoid contamination, fuel should be properly handled, dispensed and the number of fuel transfer points minimized. Fuel tanks should be kept as full as possible to prevent condensation of water in the tank. Water should not be allowed to condense in fuel storage tanks. Water can be removed by the installation of fuel-water separators at the outlet of the surface storage tank, on the pump side of portable fuel trailers and on all engines. Water-absorbing additives may also be used.

The fuel pump and governor should be set to the engine manufacturer's or MSHA's specifications prior to running the engine at the mine. In addition, the mine elevation must also be considered in the final adjustment of the fuel injection pump. Air density decreases with an increase in elevation; therefore the fuel-air ratio will change as elevation increases, thus causing an adverse effect on the engine emissions. If the engine is operated at elevations above 1,000 feet, the fuel rate should be reduced as specified by MSHA or the engine manufacturer. Turbocharged engines are an exception

to this rule due to excess quantities of air available from the turbocharger. MSHA or the engine manufacturer specifies the maximum operating elevation of a turbocharged diesel. Above this elevation, engine derating is necessary.

Caution should be observed in trying to increase the power output of engines: following manufacturer specifications can avoid significant increases in pollution. Minor increases in power that can be produced by adjusting the fuel-air ratio can also produce significant increases in particulate emissions. Similarly, too much advance or retardation of the fuel injection timing can have deleterious effects on NO_x, hydrocarbon, or particulate matter emissions.
The locks and seals on the fuel pump and governor must not be tampered with or removed. Faulty adjustment can result in overfueling and engine damage. Overfueling can increase emissions, especially black smoke, carbon monoxide, and particulates.

[Engines used at high elevation must be properly sized to ensure adequate power.] "Due to our elevation of approximately 7,000 feet, the 150-hp engines are derated to approximately 115 hp. Unfortunately, horsepower at the wheels on the Ramcars is down to about 90 hp."

—Bill Olsen,
Mountain Coal Company,
West Elk Mine

"...The first thing to do to reduce particulate emissions is to get the fuel injector pumps and the fuel injectors properly adjusted so they do not overfuel the engine. That will bring the particulate emissions down faster and more effectively than anything else.... It will also lower hydrocarbon and carbon monoxide emissions...."

—David Hofeldt, Ph.D.,
University of Minnesota

Failure to maintain the **lubrication system** can lead to significantly increased particulate emissions, and eventually to catastrophic engine failure. Excessive heat lowers the viscosity of engine oil and results in lost lubricity and accelerated engine wear. The quality of the lubrication oil is also important and contamination must be avoided. Worn valve guides and piston rings allow lube oil to leak into the combustion chamber and cause white and/or blue-black smoke, and the creation of significant particulate concentrations. System failures are often caused by a component failure, such as seized bearings, lubricant breakdown, lubricant contamination or engine overheating. To prevent these failures it is important to regularly replace oil filters, maintain crankcase lubricant at recommended levels and to maintain the engine's cooling system.

"...Any engine, regardless of whether it has mechanical controls or a sophisticated engine with electronic controls, if the engines have not been maintained, if they're burning oil, you will get plenty of blue smoke of all kinds.... I think we tend to confuse blue and black smoke sometimes. ...But generally, a blue exhaust gas will indicate oil consumption,

typically a low load operation, high oil consumption. Black smoke is more related to overfueling. In other words, we're talking about full-load overfueling of the engine, high temperature. It's basically the opposite of blue smoke."

—Jamie Sauerteig,
Deutz Corporation

The **exhaust system** must be periodically inspected and maintained to avoid the buildup of excessive exhaust back pressure and to ensure safe operation of the engine. Back pressure increases may result from a partially plugged water scrubber, flame trap, OCC, or filter or a dented exhaust pipe. Increased back pressure causes increased emissions and reduced performance. Back pressure should not exceed 27 to 40 inches of water or manufacturers' specification.

The tanks of water scrubbers used on permissible equipment must be filled and the float valves must be operational to meet MSHA safety requirements. Proper maintenance also ensures safe operation of the disposable diesel exhaust filters located downstream of the scrubbers.

"Water scrubbers are prone to mechanical failures, prone to maintenance problems. You can lose water, and you can have a filter catching fire...."

—Mridul Gautam, Ph.D.,
West Virginia University

Because a diesel engine operates over a wide range of duty cycles, the most accurate way to assess the content of exhaust emissions during actual mining conditions is to **take tailpipe samples while the engine is under load.** *As of November 25, 1997, weekly tests for CO in the undiluted exhaust are required for certain types of diesel-powered equipment in underground coal mines.*

A gas monitor can be used to measure the carbon monoxide level in the raw exhaust. A large increase in the carbon monoxide concentration is an indication that the engine has a maintenance problem that needs to be addressed. An increase in the carbon monoxide concentration is also a good indication that the diesel particulate concentration and observable smoke levels are increasing. Regular testing of an engine will provide information on the need for maintenance.

Engine emissions during mining operations cannot be accurately evaluated at idle conditions. On certain types of mine vehicles, such as load-haul-dumps (LHDs) and scoops, a repeatable loaded condition can be readily placed on the engine. On clutched vehicles this may not be possible.

Question:
"At our mines, we've got a multi-gas testing system hooked up through...our mine monitor system, and from what I understand, unless you test these vehicles under load, it's more or less useless; is this correct?"

—Morris Ivie,
Alabama Coal Miner (UMWA)

Response:

"Well, [yes]...just about."

—Mridul Gautam, Ph.D.,
West Virginia University

"...By tuning the engines on the dynamometer and making sure that we get the rated performance, the amount of smoke is greatly reduced, essentially eliminated."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

Diesel engine maintenance is the cornerstone of a diesel emission control program. Proper maintenance includes **compliance with manufacturers' recommended maintenance schedules, maintenance of accurate records and the use of proper maintenance procedures.** Inadequate maintenance, improper adjustments, wear, and other factors will cause changes in diesel exhaust emission rates. *As of November 25, 1997, diesel engines in underground coal mines must be maintained in compliance with the conditions of the MSHA approval, and examined weekly in accordance with approved checklists and manufacturer maintenance manuals.*

"...To control DPM, we've got a good strong preventative maintenance program. We bring equipment in on a regular basis on the 50, 250 and 1,000-hour intervals and do the recommended filter checks and changes as recommended by the manufacturer."

—Denny Alderman,
Turris Coal Company

"...I just want to stress the importance of a good maintenance program... We have a very good maintenance program in that it's preventive maintenance as well as, you know, when problems arise on the job, we just get it fixed."

—William Cranford,
UMWA Safety Committeeman

"The mine currently uses about 115 pieces of diesel equipment.... Although the mine has been slowly downsizing over the past five years, the number of diesel mechanics has increased, and we do this because we've upgraded our preventative maintenance. We seldom see a smoking diesel underground anymore, although once in a while, of course, we get one."

—John Marks,
Homestake Mining Company

"...A well-conceived maintenance program strives to maintain optimum engine performance and thereby control diesel exhaust emissions. The maintenance program consists of regularly scheduled replacements of fluids and filters, operating performance evaluations and additional weekly permissibility inspections,...and a training program to educate maintenance personnel in the engine operating recommendations and requirements."

—Keith Roberts,
Kerr McGee's Galatia Mine

"There's a whole section in the MSHA advisory standards on diesel maintenance almost from A to Z. It could be almost verbatim from manufacturers' manuals themselves.... They've been laying in front of mine operators' faces for 15-16 years now. Some of them [mine operators] adhere to them religiously. Others have never even seen the standards, either voluntary or mandatory, have never even opened that section of the book."

—Harry Tuggle,
United Steelworkers of America

It is worth emphasizing that if repairs and adjustments to diesel engines are to be done properly, the personnel performing such tasks must be **properly trained**. *Operators of underground coal mines where diesel-powered equipment is used, are required, as of November 25, 1997, to establish programs to ensure that persons who perform maintenance, tests, examinations and repairs on diesel-powered equipment are qualified.*

"I think the mechanics need to be trained so they understand exactly what causes the emissions."

—Norbert Paas,
Paas Technology

"It's also fundamental that the mechanics have proper and modern tools at their disposal and be trained in how to use them."

—Robert Waytulonis,
Center for Diesel Research,
University of Minnesota

WORK PRACTICES AND TRAINING

Work practices and training can have a significant effect on diesel exhaust emissions.

Care must be taken to avoid contaminating diesel fuel and lubricating oils during transfer. Fuel contamination can result from transfers taking place in a dusty and damp environment or by using the same transfer pump for different fluids. Fuel contamination will

increase emissions.

Operators should avoid lugging the engine to low RPM. Lugging an engine is applying an increasing load (torque) against the engine, while the engine's fuel rack is at the maximum position, causing a decrease in the engine's RPM. An example of lugging is when a LHD operator drives the bucket into a muck pile with the accelerator to the floor and continues to work the engine causing the engine's RPM to decrease. If the engine operator continues to work the engine to a point where the engine's RPM are low but the torque demand on the engine is high, the engine may eventually stall. However, as the engine's RPM decreases and the engine torque increases, the engine's ability to efficiently burn fuel decreases causing the engine to produce excessive carbon monoxide and particulate emissions. For naturally aspirated engines and older turbocharged engines, an engine operating at a lower RPM and high load produces higher exhaust emissions than an engine operating at higher RPM and lower load. To avoid this situation, the vehicle operator should maintain higher engine RPM while performing the work. This might mean picking up a smaller load or carrying less material or shifting to a lower gear. The result will be a reduction in engine exhaust emissions.

Operators should avoid idling the engine. Idling wastes fuel, increases emissions and may overcool the engine. Overcooling results in incomplete combustion, higher emissions and may lead to varnish and sludge formation. Unburned fuel washing down cylinder walls removes the protective film of lubricating oil and results in accelerated wear. The fuel dilutes the lubricating oil resulting in reduced lubricity. Engines should be shut down and not idled except as required in normal mining operations. *As of April 25, 1997, idling of diesel-powered equipment, except as required in normal mining operations, is prohibited in underground coal mines.*

Operators of diesel-powered equipment must be trained on the operation of the equipment, in routine inspection and maintenance activities, and to promptly report any evidence of problems. For instance, operators should carry spare intake air filters, so that clogged filters can be changed as needed. *As of November 25, 1997, operators of mobile diesel-powered equipment in underground coal mines must conduct a visual examination of the equipment before placing the equipment in operation.*

"Our operators all undergo a six-week training period underground on a training panel learning to efficiently and safely operate the equipment before we turn them loose in a production panel. A big part of that is awareness and reporting. They get on equipment, the power drops off or it's smoky, they know they're supposed to report it, and we do something about it. If air volume's dropping off, it's probably because the ventilation crew hasn't kept with the panel. It's reported, we address it. So we stay on top of things."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

"We need education, education, education of the people who operate the equipment, of the people who maintain the equipment...and of the people that inspect the equipment for the enforcement agencies. A complete education process should start tomorrow."

—Joe Main,

United Mine Workers of America

"Equipment operation–my key thing is operators' training–to make the operator aware of exactly what a diesel machine is, what to look for, give them the ability to diagnose problems on the machine so that when he sees something, he can make a decision—should I call a mechanic in or not? Very important in the program. And a walk-around inspection?—It takes less than five minutes."

—Norbert Paas,
Paas Technology

Operators and maintenance personnel should read and be familiar with the manuals covering the machines they operate and maintain. Besides specifying how a machine is to be operated and maintained, these manuals provide useful information on servicing methods and intervals.

FLEET MANAGEMENT

Diesel fleet management includes setting policies for operator and mechanic training, diesel usage, engine replacement and determining the types, numbers and horsepower of diesel engines used underground. Establishing such policies, and purchasing the needed equipment, is usually the role of upper mine management. Several participants at the MSHA workshops stressed that these management activities could play an important role in reducing diesel emissions. They suggested that mine management must actively support operator and mechanic training and ensure that adequate shop facilities are available to maintain the diesel fleet.

"...We have service areas that advance with the panels underground because we're so spread out, and our main rebuild shop is also underground...."

—Scott Vail, Ph.D.,
IMC Global Carlsbad Mine

RESPIRATORY PROTECTIVE EQUIPMENT

While it should NOT be used as the primary method of control, **use of respiratory protective equipment** can help to reduce miner exposure to DPM until better controls can be implemented.

It is generally accepted industrial hygiene practice to eliminate or minimize hazards before resorting to personal protective equipment. As indicated by the quotations in this Toolbox, various mines are taking a variety of approaches to minimize DPM emissions and to reduce DPM concentrations in mine atmospheres. However, using the correct respiratory protective equipment in areas of the mine which are difficult to ventilate and are currently subject to high concentrations of diesel pollutants can help to protect miner health.

"Now, even before mechanization, slusher operators at Homestake wore half-face respirators as protection against the silica dust. Loader operators also are required to wear them. And with the organic mist and fume cartridges and filter pads, we figure that's removing 99 percent of any diesel particulate matter in the air."

—John Marks,
Homestake Mining Company

MEASURING THE CONCENTRATION OF DIESEL PARTICULATE MATTER IN MINES

Monitoring DPM concentrations is the ideal way for a mine to track and evaluate its progress in implementing a DPM control program.Various methods for measurement are described in Appendix C of this publication.

"...The ultimate measure...is what the air quality is in the workplace, and I think that's an issue that we need to also consider. Just having cfm blowing through a place really doesn't give you the true picture.... I want to be able to do the measurement on an ongoing basis...."

—Dan Steinhoff,
ASARCO

"The Bureau of Mines, MSHA, NIOSH and others have been working with sampling technology that's been done in a prototype phase strictly within government control. We need to take that technology and get it out in the field so people can evaluate what their own exposures are and evaluate how they might reduce those exposures."

—Mark Ellis,
U.S. Borax Inc.

Mine operators who would like assistance in measuring or evaluating DPM exposures may request help from MSHA's Office of Technical Support by contacting the MSHA District

Manager in their area. Assistance may also be obtained through the NIOSH Health Hazard Evaluation Program by calling 1-800-35NIOSH.

A DOZEN WAYS TO REDUCE EXPOSURE TO DIESEL PARTICULATE MATTER

1. **Use low emission engines.** Older engines should be replaced with modern, low emission engines whenever possible, and new diesel equipment should be powered by low emission engines.

2. **Use low sulfur fuel.** Low sulfur fuel extends engine life, reduces emissions and allows catalyzed emission control devices to perform properly.

3. Use appropriate **exhaust aftertreatment devices** such as filters and oxidation catalysts, and environmentally conditioned, enclosed cabs, where possible.

4. **No ventilation, no operation.** If ventilation in an underground mine is interrupted for any reason, all diesel equipment should be shut down.

5. **Train miners properly.** Miners must learn to recognize hazards, and to correctly operate and maintain diesel equipment. Designated maintenance personnel should be specially trained in diesel repair.

6. **Read operation and maintenance manuals.** Deviation from maintenance and operation schedules and procedures will increase emissions.

7. **Beware of black smoke.** Black smoke from a diesel engine is a result of improper fuel to air ratio. Black smoke indicates that engine maintenance is needed.

8. **No unnecessary idling.** Idling wastes fuel, increases emissions, and may overcool the engine resulting in increased wear.

9. **Keep it clean.** Dirt and dust are detrimental to engines. Periodic maintenance of the intake air system is required for peak engine performance. The air cleaner must be changed to avoid an intake air restriction that will increase emissions.

10. **Keep it cool.** Engine overheating is a frequent cause of premature engine failures. Ensure that the lubrication oil is the correct viscosity and kept at the recommended levels, and that heat exchangers are clean and undamaged.

11. **Do not operate the engine at high load and low speed** (lugging), as this increases emissions. Operators should shift gears to operate the engine at higher speed to lessen the

engine load.

12. **No overpowering.** The fuel injection pump governor must be set according to manufacturer's specifications or MSHA requirements. Tampering with the fuel system to boost power must be avoided.

APPENDICES

Appendix A: Recommended Additional Reading

1. Background

Health Effects Institute. Diesel Exhaust: A Critical Analysis of Emissions, Exposure and Health Effects. April 1995.
(For a copy contact the Health Effects Institute, 955 Massachusetts Avenue, Cambridge, MA 02139, or by calling 617-876-6700.)

Mine Safety and Health Administration, report of the Advisory Committee on Diesel-Powered Equipment in Underground Coal Mines, 1988. (For a copy, available at cost, contact: MSHA, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Va. 22203-1984, or call 703-235-1910.)

2. Controls

Mine Safety and Health Administration, transcripts of three workshops on Diesel Particulate control methods, Fall 1995.
(For a copy, on paper or disk, available at cost, contact: MSHA, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Va. 22203-1984, or call 703-235-1910.)
U.S. Bureau of Mines. *Diesels In Underground Mines: Measurement and Control of Particulate Emissions.* IC 9324, 1992. 132 pages.
(To receive a copy contact Robert Waytulonis, University of Minnesota Center for Diesel Research, Department of Mechanical Engineering, 125 ME, 111 Church Street, S.E., Minneapolis, MN 55455 or call 612-725-0760, x4760.)

Waytulonis, R. W. Diesel Exhaust Control, Chapter 11.5. *SME Mining Engineering Handbook*, 2nd Ed. v. 1. H. L. Hartman, ed., 1992, pp. 1040-1051.

3. Measurement techniques

Cantrell, B. K., Williams, K. L., Watts, W. F, and Jankowski, R. A., "Mine Aerosol Measurement", Chapter 27 in *Aerosol Measurement: Principles, Techniques, and Applications*, ed. K. Willeke, and P. A. Baron. Van Nostrand, 1993, pp. 591-611.

Cantrell, B. K., and Watts W. F., "Occupational exposures to diesel exhaust aerosol," Littleton, CO, Proceedings of the SMME Annual Meeting and Exhibit, Phoenix, AZ, March 11-14, 1996. Preprint No. 96-126.

Gangal, M.J., Ebersol, J., Vallieres, J., and Dainty, D., "Laboratory Study of Current (1990/91) SOOT/RCD Sampling Methodology for the Mine Environment," Mining Research Laboratories, Canada Centre for Mineral and Energy Technology, MRL 91-000510, Ottawa, Canada, 1990.

Gangal, M.J., and Dainty, E.D., "Ambient Measurement of Diesel Particulate Matter and Respirable Combustible Dust in Canadian Mines," *Proceeding of VIth U.S. Mine Ventilation Symposium*, Salt Lake City, Utah, 1993.

Haney, R.A., Saseen, G.P., and Waytulonis, R.,W., "An Overview of Diesel Particulate Exposures and Control Technology in the U.S. Mining Industry," Proceedings of the 2nd International Conference on the Health of Miners, Pittsburgh, PA., November, 1995.

Haney, R.A., and Fields, K.G., "Diesel Particulate Exposures in the Mining Industry," MINE Expo International '96, Las Vegas, NV, September 10, 1996.

McCartney T.C. and Cantrell B.K., "A Cost-Effective Personal Diesel Exhaust Aerosol Sampler," Bureau of Mines IC 9324, pp. 24-30, 1992.

Appendix B: Glossary of Terms

Aftercooling Cooling intake air prior to induction into the combustion chamber to increase power and reduce the emission of oxides of nitrogen.

Aftertreatment devices Devices such as filters which remove constituents of diesel exhaust as they leave the equipment.

Approval plate quantity Quantity of ventilating air given in cubic feet per minute (cfm) that will dilute the concentrations of gaseous exhaust contaminants from a single diesel engine to specified limits for CO_2, CO, NO and NO_2. This is sometimes called the nameplate air quantity.

Aromatic content Hydrocarbons in diesel fuel are numerous but generally fall into three families: paraffins, naphthenes and aromatics. Reducing fuel aromatic content will reduce hydrocarbons in the exhaust and the soluable organic portion of DPM.

Autoregeneration Self-cleaning of a filter by an engine which has high enough exhaust temperatures to oxidize the diesel particulate matter captured on the filter. See "regeneration" below.

Cetane number A number that describes the ignitability of diesel fuel. Fuels with high cetane numbers have low self-ignition temperatures. Fuels with low cetane numbers cause engine roughness.

Cloud point The highest temperature at which the first trace of paraffin visibly separates in the liquid fuel.

Diesel particulate matter (DPM) Small particles of matter in diesel exhaust, which can be collected on filters. The terms "diesel particulate", or "DP", mean the same thing.

Elemental carbon Elemental carbon is sometimes used as a surrogate measure for DPM. It is composed of graphitic carbon, as opposed to organic carbon, and usually accounts for 40 to 60 percent of the DPM by mass.

Exhaust back pressure Buildup of pressure against the engine created by the resistance of the exhaust flow passing through the exhaust system components.

Fuel-to-air ratio The ratio of the amount of fuel to the amount of air introduced into the diesel combustion chamber.

g/hp-h (Gram per horsepower-hour) The hourly mass of a contaminant in diesel engine exhaust emissions divided by the engine horsepower.

Impactor Device used to separate particles by size.

Nameplate quantity See approval plate quantity.

Organic carbon Non-graphitic soluble organic carbon material associated with DPM.

Oxygenates Fuel additives which contain a substantial fraction of oxygen by weight, e.g. ethanol, methanol, and methyl soyate.

Permissible Equipment on which safety components and temperature controls have been added to prevent the ignition of methane or coal dust so that it can be safely used in areas of an underground mine where methane is likely to accumulate.

Regeneration Process of oxidizing DPM collected on a diesel exhaust particulate filter to remove it. This process cleans the filter and reduces back pressure to acceptable limits.

Respirable combustible dust (RCD) Method of measuring DPM using a combustion process.

Threshold limit value (TLV®) Time-weighted average concentration (established by the American Conference for Governmental Industrial Hygienists) for a conventional 8-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day

after day, without adverse effect.

Total Carbon Refers to the sum of the elemental and organic carbon associated with the diesel particulate matter and accounts for about 80-85 percent of the DPM mass.

Turbocharge Process of increasing the mass of intake air by pressurization to the engine which allows more fuel to be burned and results in increasing the engine's power output.

Volatility Measure of the ability of a fuel to vaporize.

Wax separation Separation of the paraffinic portion of diesel fuel from the other components which occurs at low temperature. It can cause fuel flow problems.

Appendix C:
Methods of Measuring Diesel Particulate Matter (DPM)

DPM is comprised of solid elemental carbon particles, with adsorbed and condensed hydrocarbons and sulfates. The particles are arranged in chain aggregates that have a mass median diameter of about 0.2 micrometers. Several methods are available for determining DPM concentrations in the environment. They include:

• Measuring the mass (gravimetrically) of the submicrometer portion of the respirable fraction of the aerosol.

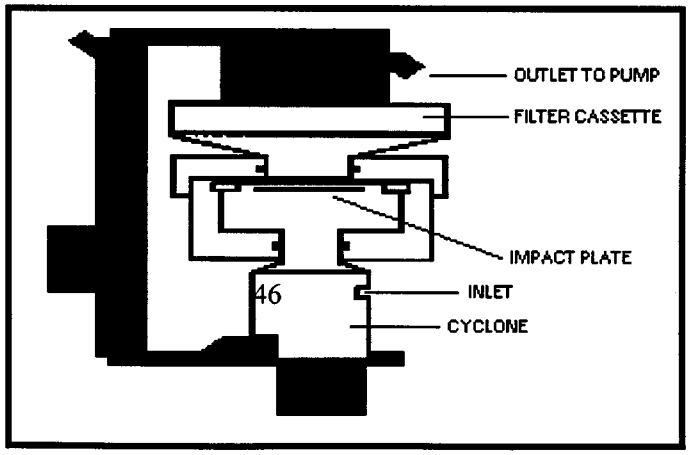
• Measuring the concentration (chemically) of the elemental and organic carbon fractions (total carbon) of either the submicrometer portion of the respirable dust aerosol or of the total respirable dust aerosol.

• Measuring the mass (gravimetrically) of the combustible fraction of the respirable aerosol (often referred to as the RCD method).

Measuring the mass of the submicrometer portion of the respirable dust sample is the most common method currently being used to determine the DPM concentration in coal mines. This method takes advantage of the facts that DPM in coal mines is generally less than 0.8 mm in size and that other mineral dust collected in a respirable dust sample is generally greater than 0.8 mm in size.

Figure 2 shows a schematic of a sampling device that can be used to collect the submicrometer fraction of the respirable dust aerosol. The sampling device is similar to the standard respirable dust sampling device, which consists of a 10 mm nylon cyclone and a sample collection filter. However, the sampling device has been modified to incorporate an inertial impactor that separates particles greater than 0.8 μm in size from the aerosol sample. Particles greater than 0.8 μm are collected on an impaction plate. The submicrometer fraction (particles less than 0.8 μm in size) is collected on the filter. Depending on the type of filter used to collect the submicrometer fraction, the collected sample can be analyzed gravi metrically to determine the DPM concentration or chemically to determine the total carbon (elemental and organic) concentration of the submicrometer particulate.

Figure 2. Personal Sampler Adapted for Submicron Sampling



For gravimetric analysis, the sample should be collected on a preweighed 5.0 μm pore size, vinyl Metricel® filter. If the submicrometer mass of the sample collected is less than 0.3 mg the DPM should be determined using chemical analysis. For the chemical analysis a preconditioned (heated in air at 400oC for 1 hour) quartz fiber-filter should be used. The total carbon content of samples collected on quartz-fiber filters can be determined using NIOSH's Analytical Method 5040.

For metal and nonmetal mining operations, samples should generally be collected without the impactor because as much as 30 percent of the DPM in such mines may be greater than 0.8 μm.

About 80-85 percent of the dpm mass is total carbon (elemental and organic).

The RCD method is applicable to certain metal and nonmetal mining operations. For the RCD method, the aerosol sample is usually collected using a typical respirable dust sampler. To measure the concentration of DPM, the respirable sample is collected on a preweighed, 0.8 μm pore size, silver membrane filter. The filter is preconditioned by heating at 400oC in an oven. After sample collection, the filter is first weighed to determine respirable dust mass and then is heated at 400oC in an oven to burn off the carbonaceous material. The sample is then reweighed. The loss in sample mass resulting from the heating represents the DPM.

The RCD method should be used with caution when a hydrated mineral dust (e.g., gypsum or trona) or a carbonaceous material other than DPM collects on the filter. Such materials are chemically altered by the heating process and produce erroneous results unless properly accounted for. Also, the potential for metal oxide formation exists, which will bias the results.

All of these methods have been used to determine the concentration of DPM in underground mines. Studies in metal and nonmetal mines of these methods have shown that DPM concentrations determined from gravimetric analysis of the submicrometer fraction of the respirable dust aerosol are approximately the same as those determined using the RCD method. Studies have also shown that in metal and nonmetal mines, total carbon concentration determined from the submicrometer fraction of the respirable aerosol is nearly equivalent to the concentration determined from the gravimetric analysis of the submicrometer fraction of the respirable aerosol. This may not be true for samples collected in mines containing other types of submicrometer combustible materials.

For further information on the appropriate use of these methods contact MSHA.

APPENDIX D:
REFERENCES TO RELEVANT REGULATIONS

MSHA-Title 30, Code of Federal Regulations
Underground coal, diesel-powered equipment regulations-published in the Federal Register on October 25, 1996, Vol. 61, Number 208, pp. 55412-55534. The Toolbox makes reference to the following requirements:

approved engines required *75.1907*

approval criteria Parts *7 & 36, revised*

low sulfur fuel *75.1901(a)*

fuel additives *75.1901(c)*

maintenance of air filters *75.1914(d)*

weekly CO testing
of tailpipe emissions *75.1914(g)*

compliance with manufacturer specifications
75.1909(a)(1), 75.1914(f)(1)

maintenance personnel qualifications *75.1915*

idling restrictions *75.1916(d)*

visual exam by equipment operator *75.1914(e)*

Limitations applicable to certain diesel exhaust gases:

underground coal *75.321, 75.322*

surface coal *71.700*

underground metal/nonmetal *57.5001*

surface metal/nonmetal *56.5001*

EPA standards for new diesel engines-Title 40, Code of Federal Regulations:

1988 "on-highway" engine standards
40 CFR 86.088-11

1996 "non-road" engine standards
40 CFR 89.112-96

Pennsylvania state standards for use of diesel-powered equipment in deep coal mines:

Pennsylvania Act 182 of 1996, December 19, 1996. This Act adds a new article to the Bituminous Coal Mine Act, "Article II-A, Diesel-Powered Equipment." It took effect on February 17, 1997. For information, contact the Pennsylvania Bureau of Deep Mine Safety, 412-439-7469, or fax at 412-439-7324.

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federal register

Thursday
October 29, 1998

Part III

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

Implementation of Public Law 103–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 178 and 179

[T.D. ATF–415; Ref: Notice No. 857; 93F–057P]

RIN 1512–AB67

Implementation of Public Law 103–159, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act

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

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations to implement the provisions of Public Law 103–159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. These regulations implement the law by requiring, with some exceptions, a licensed firearms importer, manufacturer, or dealer to contact the national instant criminal background check system (NICS) before transferring any firearm to an unlicensed individual. NICS will advise the licensee whether the system contains any information that the prospective purchaser is prohibited by law from possessing or receiving a firearm.

DATES: This rule is effective November 30, 1998.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Public Law 103–159, the Brady Handgun Violence Prevention Act (the ''Brady law'' or ''Brady''), imposed as an interim measure a waiting period of 5 days before a licensed importer, manufacturer, or dealer may sell, deliver, or transfer a handgun to an unlicensed individual. The waiting period applies only in States without an acceptable alternate system of conducting background checks on handgun purchasers. The interim provisions of the Brady law, 18 U.S.C. 922(s), became effective on February 28, 1994, and cease to apply on November 30, 1998.

Permanent Provisions of the Brady Law

The permanent provisions of the Brady law provide for the establishment of a national instant criminal background check system (''NICS'') that a firearms licensee must contact before transferring any firearm to an unlicensed individual. The law requires that the permanent system be established not later than November 30, 1998. While the interim provisions apply only to handguns, the permanent provisions of the Brady law apply to all firearms. Furthermore, the law provides that the system may take up to three business days to notify the licensee whether receipt of a firearm by the prospective purchaser would be in violation of law.

National Instant Criminal Background Check System

The Brady law requires that the Attorney General establish a permanent national instant criminal background check system that any licensee may contact, by telephone or by other electronic means in addition to the telephone, for information on whether receipt of a firearm by a prospective transferee would violate Federal or State law. The law requires that the permanent system be established not later than November 30, 1998. It is expected that the NICS will be established by October 31, 1998, although licensees will not be required to contact NICS until November 30, 1998.

Upon establishment of the system, the Attorney General is required to notify each firearms licensee and the chief law enforcement officer of each State of the existence and purpose of NICS and the means to be used to contact NICS. Beginning on the date that is 30 days after the Attorney General notifies firearms licensees that NICS is established, the permanent provisions of Brady, 18 U.S.C. 922(t), become effective.

Statutory Requirements

Section 922(t) generally makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a firearm to an unlicensed individual (transferee), unless—

1. Before the completion of the transfer, the licensee contacts the national instant background check system;

2. The system provides the licensee with a unique identification number signifying that transfer of the firearm would not be in violation of law OR 3 business days (meaning a day on which State offices are open) have elapsed from the date the licensee contacted the system and the system has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

3. The licensee verifies the identity of the transferee by examining a valid identification document containing a photograph of the transferee.

Exceptions to NICS

The statute provides the following exceptions to the national instant background check system:

1. The transferee presents to the licensee a permit which was issued not more than 5 years earlier by the State in which the transfer is to take place and which allows the transferee to possess or acquire a firearm, and the law of the State provides that such a permit is to be issued only after an authorized government official has verified that available information does not indicate that possession of a firearm by the transferee would be in violation of the law;

2. Purchases of firearms which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms); or

3. Purchases of firearms for which the Secretary has certified that compliance with NICS is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the chief law enforcement officer of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Penalties for Noncompliance

Section 922(t) provides that a firearms licensee who transfers a firearm and knowingly fails to comply with the requirements of the law, in a case where compliance would have revealed that the transfer was unlawful, is subject to license suspension or revocation and a civil fine of not more than $5,000.

Notice of Proposed Rulemaking

On February 19, 1998, ATF published in the **Federal Register** a notice proposing regulations to implement the requirements placed on Federal firearms licensees by section 922(t) (Notice No. 857; 63 FR 8379). The comment period for Notice No. 857 closed on May 20, 1998.

On June 4, 1998, pursuant to section 103(h) of the Brady law, the Department of Justice issued proposed regulations establishing the methods of operation for NICS, including policies and procedures for ensuring the privacy and security of the system and appeal procedures for individuals who are determined by NICS to be ineligible to purchase a firearm (63 FR 30429, 30430, and 30514). Accordingly, these issues were not addressed in ATF's proposed regulations.

Prior to the close of the comment period, two commenters requested that public hearings be held on the proposed regulations and one commenter requested that the comment period be extended. ATF believes that it is necessary to advise Federal firearms licensees of their responsibilities under the permanent provisions of the Brady law as much in advance of the November 30, 1998, effective date as possible. An extension of the comment period and the holding of public hearings would delay the issuance of final regulations. Furthermore, ATF believes that 90 days is a sufficient amount of time for all interested parties to respond to the issues raised in the notice. Finally, ATF believes that any information received during an extension of the comment period or presented in oral testimony at a public hearing would be similar to that received during the 90-day comment period. Accordingly, ATF is not extending the comment period or holding public hearings on the proposed regulations.

Analysis of Comments

In response to Notice No. 857, ATF received 8,492 comments, representing 8,779 signatures. Comments were submitted by Federal firearms licensees, licensed firearms collectors, nonlicensed individuals, industry trade groups, and other organizations (e.g., National Association of Arms Shows, Inc., National Pawnbrokers Association, Violence Policy Center, Gun Owners of America, and the National Rifle Association of America), members of Congress, State representatives, and law enforcement officials.

Approximately 125 commenters addressed issues which were outside the scope of the notice. These include user fees for NICS checks, hours of operation that NICS will be available for background checks, how firearms licensees will receive final notification from NICS in the event a background check is delayed, provisions for a toll-free appeal hotline that firearms purchasers can contact in the event of a wrongful denial of a purchase, and ATF's assurance that in most cases a NICS check will be instantaneous. These issues are being addressed in the Department of Justice's rulemaking proceeding.

Twenty-three commenters expressed opposition to the Brady law and urged its repeal. One hundred sixty-six commenters requested other changes that would also require legislative action. These include eliminating the provision of the law which authorizes NICS to take up to three business days to respond to a request for a background check, restricting the Department of Justice's role in implementing any provisions of the Brady law, exempting State ''instant check'' and ''point of sale check'' systems from a NICS check, and prohibiting NICS from containing information on certain categories of persons prohibited from receiving or possessing firearms (such as renunciates and persons discharged from the military under dishonorable conditions). ATF is not adopting any of these comments because they are inconsistent with the language of the statute.

Long Guns, Antique Firearms, and Licensed Collectors of Curios or Relics

Forty-seven commenters contend that the permanent provisions of the Brady law either do not apply or should not apply to transfers of long guns. Some commenters point out that the title of the statute, the ''Brady Handgun Violence Prevention Act,'' clearly shows that Congress intended the law, both the temporary and permanent provisions, to apply only to handguns. Other commenters argue that since the interim provisions of the Brady law apply only to handguns, it is apparent that the permanent provisions should apply only to handguns as well. These commenters maintain that ATF has exceeded its authority under the Brady law by proposing to require NICS checks for all firearms, including rifles and shotguns.

While the title of the statute is the ''Brady Handgun Violence Prevention Act,'' the plain language of the law clearly states that the permanent provisions apply to all firearms, including rifles and shotguns. In that regard, section 922(t)(1) provides that a Federal firearms licensee ''shall not transfer a firearm'' to an unlicensed individual unless before the completion of the transfer, the licensee contacts NICS. Section 103(j)(2) of the Brady law provides that the term ''firearm'' has the meaning prescribed in § 921(a) of the GCA. This section defines ''firearm,'' in part, as ''any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; . . .'' Thus, the term ''firearm'' clearly includes rifles and shotguns.

Two commenters inquired whether antique firearms are subject to the permanent provisions of the Brady law. Pursuant to section 921(a)(3), the term ''firearm'' does not include an antique firearm (as defined in section 921(a)(16)). Accordingly, the transfer of an antique firearm is not subject to the Brady law.

Several commenters requested clarification whether the permanent provisions of the Brady law apply to licensed collectors of curios or relics. The transfer of a firearm by a licensed collector is not subject to section 922(t), since the law by its terms applies only to the transfer of a firearm by a licensed importer, manufacturer, or dealer to an unlicensed person. Furthermore, since the permanent provisions of Brady do not apply to transfers among licensees, the transfer of a curio or relic firearm to a licensed collector is not subject to permanent Brady. However, in transactions involving firearms not classified as curios or relics, the licensed collector has the same status as a nonlicensee. Thus, a licensed collector's acquisition of a firearm that is not a curio or relic from an importer, manufacturer, or dealer is subject to the requirements of permanent Brady.

Pawn Transactions

In Notice No. 857, ATF advised that the proposed regulations would apply the permanent provisions of the Brady law to the redemption of a pawned firearm. As ATF noted, the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, amended § 922(s) of the GCA to specifically exempt transactions involving the return of a handgun to the person from whom it was received. However, no such exemption appears in § 922(t).

Three hundred thirty-eight commenters disagreed with ATF's interpretation that the permanent provisions of the Brady law apply to the redemption of a pawned firearm. Many of the commenters argue that the law was intended to apply only to the sale of a firearm and not to pawn transactions involving the redemption of a firearm. A national trade association representing 3,600 pawnbrokers suggested that Congress did not intend to cover the redemption of a pawned firearm, and that the term ''transfer'' in the Brady law referred to a transfer of title. The commenter further contends that the amendment of § 922(s) of the GCA by the Violent Crime Control and

Law Enforcement Act of 1994 ''indicates their [Congress'] intent to not apply Brady to pawn loans.'' Several commenters suggested that because pawn loan customers would not have the disposable income to pay for a NICS check, they would instead sell their firearms on the street through unregulated sources.

After carefully considering the arguments raised by the commenters, ATF has concluded that the permanent provisions of the Brady law apply to the redemption of a pawned firearm. Unlike § 922(s) of the GCA, there is no provision in § 922(t) which exempts transactions involving the return of a firearm to the person from whom it was received.

Furthermore, ATF does not agree with the commenters who suggested that the return of a redeemed firearm is not a ''transfer'' within the meaning of the permanent provisions of the Brady law. The redemption of a pawned firearm has always been treated as a disposition under the GCA, and a Form 4473 has always been required for such redemptions. Furthermore, in *Huddleston* v. *United States*, 415 U.S. 814 (1974), the Supreme Court held that the redemption of a pawned firearm was an acquisition within the meaning of the GCA. Thus, there is no basis for exempting the redemption of a pawned firearm from the permanent provisions of Brady.

Consignments

ATF has received inquiries regarding the return by a licensee of a consigned firearm to an unlicensed individual. In these cases, the unlicensed individual has delivered a firearm to the licensee for sale. Sales of the firearm are handled in the same manner as other firearm sales. However, if the licensee does not sell the firearm, it may be returned to the unlicensed individual.

ATF has always treated the return of consigned firearms as a transfer or disposition within the meaning of the GCA. The individual to whom the consigned firearms are returned must complete a Form 4473 in the same manner as any unlicensed individual who is acquiring a firearm from a licensee. Accordingly, the final regulations do not provide any exemption for the return of a consigned firearm.

Repaired and Replacement Firearms

While this issue was not specifically addressed in the proposed rule, approximately 55 comments dealt with the application of permanent Brady to repaired and replacement firearms. Most of those commenters argued that the return of a repaired firearm to the person from whom it was received should not be considered a ''transfer'' for purposes of the Brady law.

The notice of proposed rulemaking did not propose that such transactions should be subject to permanent Brady. After carefully considering the comments on this issue, ATF agrees that the return of a repaired or replacement firearm by a licensee is not a ''transfer'' within the meaning of the Brady law.

Historically, the return of a repaired or replacement firearm by a licensee has been treated in a different fashion from other dispositions under the GCA. Since the enactment of the GCA in 1968, the regulations have provided that a Form 4473 ''shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm or a replacement firearm is returned to the person from whom received.'' See 27 CFR 178.124(a).

The final rule does not require NICS checks in any situation in which the transferee is not required to complete a Form 4473. Accordingly, transactions falling within the exemption found in section 178.124(a) are not subject to the requirement for an NICS check.

Time of NICS Check

As proposed in Notice No. 857, § 178.102(c) provided that a NICS check may be relied upon by the licensee only for use in a single transaction and for a period not to exceed 30 days. If the transaction is not completed within the 30-day period, the licensee must initiate a new NICS check prior to completion of the transfer.

ATF received approximately 40 comments on this proposal. Many commenters objected to the proposal that a separate NICS check must be conducted for each separate transaction. They contend that this requirement is unnecessary and places a burden on both NICS and the licensee. Two commenters stated as follows:

> The purpose of the check is to ensure the individual who wishes to purchase a firearm is not a prohibited possessor under the law. In this instance, there is no reason to require a separate NICS check if an individual purchases more than one firearm within a 30 day calendar period.

Many other commenters were concerned about the validity of a NICS check with respect to the return or exchange of a newly purchased firearm.

The Brady law provides that a licensee may not transfer a firearm to an unlicensed individual unless, before the completion of the transfer, the licensee contacts NICS. It is clear that the law contemplates that once the transfer is completed, any additional transfer of a firearm to the same individual would be a separate transfer that would require a separate NICS check. With respect to the return or exchange of a newly purchased firearm, replacement firearms are not subject to a NICS check. However, if the firearm is being returned and exchanged for a different firearm, this constitutes a separate transaction and another NICS check would be required.

Several commenters objected to ATF's proposal that a NICS check should only be valid for 30 calendar days. Three commenters argued that the Brady law does not specify or impose any time limit on the validity of a NICS check. Three other commenters suggested that a NICS check should be acceptable for multiple purchases for 5 years, the same period of time for which a permit is valid.

Another commenter, a trade organization representing approximately 300 firearms dealers, asserted that the proposed 30-day limitation is unreasonable and unnecessary. This commenter states that customers often order firearms and then later return to the licensee's premises to effect the transfer. Based on the experience of its membership, this commenter believed that many transfers do not take place within 30 days, due to the customer's own business commitments or the customer's personal circumstances. Accordingly, this commenter proposed that the NICS check should be valid for a period of 60 days. Another commenter expressed similar concerns, and recommended that the check should be valid for 45 days ''to allow normal transactions to occur, given delays and distances normally encountered in firearms sales situations.''

As ATF stated in Notice No. 857, it is clear that the Brady law contemplates that the licensee should contact NICS immediately prior to the transfer of a firearm. However, ATF recognized that many States have waiting periods which mandate a delay of up to 10 days before the firearm may be transferred. Thus, the proposed rule provided that a NICS check would be valid in a single transaction for a period of up to 30 days. This would allow the purchaser a reasonable period of time to come back for the firearm in States with lengthy waiting periods.

After carefully considering the comments, ATF has decided not to extend the period in which a NICS check retains its validity. ATF believes that the 30-day period is reasonable in that it allows sufficient time for a purchaser to return to take possession of a firearm. In situations where a

purchaser has ordered a custom-made firearm and a longer delay is required, the licensee may choose to conduct the NICS check after the firearm comes in, rather than at the time that the order is placed. In any event, licensees should try to avoid lengthy delays between the time the NICS check is conducted and the time the firearm is transferred. The 30-day limit provides a concrete limit beyond which the firearm may not be transferred pursuant to a ''stale'' NICS check.

Permits

The Brady law provides that a licensee is not required to initiate a NICS check where the purchaser presents a permit that allows the purchaser to ''possess or acquire a firearm.'' The final rule clarifies that the permit must be valid under State law. Section 178.102(d)(1)(i) of the proposed regulations clarified that this exception includes permits to carry concealed weapons as well as permits specifically authorizing the purchase of a firearm.

Five commenters expressed opposition to ATF's proposal that a permit to carry concealed weapons was included within the permit exemption provided by permanent Brady. Four of the commenters contend that the proposed regulation expands the scope of the exemption and that the clear language of the Brady law limits the exemption to a permit to ''possess or acquire'' a firearm. Two commenters maintain that this provision of the law applies only to permits specifically authorizing the purchase of a firearm.

Some commenters assert that excepting concealed weapons permit holders from a NICS check would significantly increase the number of exempt firearms transactions. For example, one commenter noted that ''[t]his expansion will dramatically increase the possibility of unlawful firearms purchase[s] in part because the varying state systems for revocation of the permits frequently involve considerable delay.''

Notwithstanding these comments, it is ATF's conclusion from the plain language of the Brady law that a permit to ''possess'' a firearm includes a permit to carry concealed weapons. Furthermore, ATF's position in this matter is consistent with that taken with respect to the permit alternative under the interim provisions of the Brady law. Accordingly, § 178.102(d)(1)(i) is being adopted in the final regulations as proposed.

NICS Checks in Conjunction With the Issuance of Permits

The law provides that for a permit to qualify as an alternative to the NICS check at the time of transfer, it must have been issued not more than 5 years earlier by the State in which the transfer is to take place. Furthermore, the permit is a valid alternative under permanent Brady only if the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law.

In construing the language of the statute, the proposed regulations provided that as of November 30, 1998, ''the information available to'' State officials who issue permits will include a NICS check. The proposed regulations also clarified that if a State did not disqualify all individuals prohibited under Federal law, the permits issued by that State would not be accepted as alternatives under the permanent provisions of the Brady law.

Approximately 3,700 commenters objected to ATF's proposal that the acceptance of permits as alternatives was conditioned upon the State running a NICS check prior to issuing the permit. Most of the commenters contend that the statute does not mandate that State officials conduct a NICS check on all permit applicants. Two commenters argued that ''[t]his portion of the proposed regulation violates *Prinz [sic] v.* United States. Here the United States Supreme Court held that ''The Federal Government may not compel the States to enact or administer a federal regulatory program.'''

The issuance of regulations setting standards for permits that meet the criteria of the statute in no way implicates Tenth Amendment or Federalism concerns. Neither the Brady law nor the regulations require States to establish or administer permit systems at all. However, the law does set forth certain standards that State permits must meet in order to be recognized as valid Brady alternatives.

As of November 30, 1998, ''the information available to'' State officials will include NICS. As indicated in Notice No. 857, a NICS check will provide a more extensive background check of the purchaser than other record systems containing only criminal records. NICS will include records from the Department of Defense concerning dishonorable discharges, records from the Department of State regarding individuals who have renounced United States citizenship, and other information not available in criminal records.

Accordingly, § 178.102(d)(1)(iii) is adopted as proposed.

One commenter noted that Notice No. 857 was silent with respect to State permits issued prior to the effective date of the permanent provisions of the Brady law. Prior to November 30, 1998, the information ''available to'' State permit officials did not include NICS. Permits issued prior to that date that were recognized by ATF as valid alternatives under interim Brady will continue to be recognized as valid alternatives after November 30, 1998, notwithstanding the fact that no NICS check was conducted prior to the issuance of the permits. These permits will be ''grandfathered'' for a period not to exceed 5 years or the duration of the permit, whichever is shorter.

Firearms Transaction Record (Form 4473)

In general, the regulations provide that prior to the transfer of a firearm to a prospective purchaser, the buyer must complete, sign, and date a firearms transaction record, Form 4473. The form requests certain information, including the transferee's name, sex, height, weight, race, residence address, date of birth, and place of birth. In Notice No. 857, ATF proposed amending the regulations to solicit additional optional information about the purchaser, including the transferee's social security number, to facilitate the transfer of a firearm (§ 178.124(c)(2)). ATF noted in Notice No. 857 that ATF Form 5300.35, Statement of Intent to Obtain a Handgun (Brady form), currently requests the purchaser's social security number as optional information.

Approximately 8,000 commenters addressed this proposal. Twenty-five commenters misunderstood the proposal and were under the impression the proposed regulation was requiring purchasers to provide their social security number on Form 4473. The remaining commenters expressed other concerns and urged ATF to withdraw the proposed regulation. Many commenters contend that requesting the purchaser's social security number violates the individual's right to privacy. The commenters are also concerned about the possible misuse of the information, including the establishment of a national registry of firearms owners. Other commenters are concerned that the request for a purchaser's social security number as additional optional information may eventually become a requirement. These commenters also believe that a firearm

transfer may be unnecessarily delayed or the purchaser subjected to additional scrutiny if the social security number is not provided.

The final regulations will include the purchaser's social security number on Form 4473 as optional information. The social security number is a unique identifier. ATF believes that providing this information on Form 4473 will facilitate the transfer of a firearm. As discussed in Notice No. 857, ATF believes this additional information will help minimize the misidentification of firearms purchasers as felons or other prohibited persons whose receipt and possession would violate the law. For example, by providing this information the transferee might avoid confusion with a prohibited buyer who has the same name and date of birth as the transferee. Nevertheless, providing the social security number on Form 4473 is optional under the proposed regulation and the purchaser is not required to provide such information.

With respect to the commenters' concern regarding the establishment of a national registry of firearms owners, ATF would note that the registration of firearms, firearms owners, or firearms transactions or dispositions is specifically prohibited by 18 U.S.C. 926(a) and section 103(i) of the Brady law. ATF would further note that Forms 4473 are maintained by dealers, not the Federal Government.

In Notice No. 857, ATF proposed that in any transaction for which a licensee receives a unique identification number from NICS, such number will be recorded on Form 4473 and retained in the records of the licensee, regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred (27 CFR 178.102(b)). Several commenters objected to the proposed requirement that licensees retain copies of Form 4473 for denied NICS checks or where there is no transfer of a firearm. The commenters argue that this requirement is unnecessary and only serves to increase the paperwork burden on licensees. ATF disagrees with the commenters and finds the requirement to be both necessary and warranted. As explained in the notice, requiring licensees to retain Form 4473 in all cases will enable ATF to determine compliance with the law by licensees and purchasers. Accordingly, the regulation is being adopted as proposed. The final rule clarifies that the transaction number provided by NICS shall include either a NICS transaction number or, in States where the State is recognized as a point of contact for NICS checks, a State transaction number.

Seven commenters contend that the Brady law requires Form 4473 to be destroyed after each firearm transaction. Specifically, § 922(t)(2)(C) provides that if a NICS check indicates receipt of a firearm by a prospective purchaser would not violate Federal or State law,

> [T]he system shall . . . destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

The Brady law does not require the Form 4473 to be destroyed after each firearm transaction. The ''system'' mentioned in the law refers to the national instant background check system (NICS) established by the Attorney General. In addition, the Department of Justice has issued proposed regulations with respect to the destruction of records in the NICS (AG Order No. 2158–98; June 4, 1998, 63 FR 30430).

Several commenters misinterpreted § 178.124(c)(3) as proposed by ATF. It is their understanding that the regulation requires licensees to provide NICS with information regarding the firearm being transferred (e.g., type, model, caliber or gauge, etc.). The commenters are opposed to NICS collecting and maintaining such information. The proposed regulation was not intended to require licensees to provide NICS with specific information about an individual's firearms purchase. For clarification purposes, ATF is amending § 178.124(c) and revising Form 4473 to specify that information about the firearm being transferred (e.g., the name of the manufacturer, the type, model, caliber, etc.) will be recorded on the Form 4473 by the licensee after the completion of the NICS check.

Civil Penalties

As explained in the notice of proposed rulemaking, section 922(t)(5) of the GCA provides that a licensee who knowingly transfers a firearm and knowingly fails to comply with the provisions of section 922(t)(1) with respect to the transfer may be subject to revocation or suspension of the license for up to 6 months and a civil fine of not more than $5,000. This provision applies only where at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate section 922(g) or (n) of the GCA, or State law.

The GCA, 18 U.S.C. 923(e), already provides ATF with authority to revoke a firearms license, after notice and opportunity for hearing, where the licensee has willfully violated any of the provisions of the GCA or the regulations issued thereunder. Furthermore, section 923(f) provides that revocation actions are subject to *de novo* judicial review by the district court in which the licensee resides or has his principal place of business.

ATF is amending Subpart E of Part 178 to provide that the existing procedures for revocation of licenses will also apply to the suspension and revocation of licenses under section 922(t)(5), as well as the imposition of a civil fine under this provision. The final rule also clarifies that such actions are subject to *de novo* judicial review by the district court.

Miscellaneous

Approximately 3,700 commenters expressed opposition to proposed § 178.97(b). This section requires a NICS check where a club or similar organization temporarily furnishes firearms to participants in a trap or similar shooting activity for use off the premises. The commenters contend that this requirement ''is neither required by, nor is consistent with, the statute.'' ATF views the activity mentioned above in the same manner as the loan or rental of a firearm to a nonlicensee for temporary use off the licensed premises for lawful sporting purposes. In that regard, § 178.97(a) requires the licensee to record the transaction in his permanent records of acquisition and disposition and on Form 4473. It is ATF's position that such a transfer is subject to the requirements of the Brady law. Accordingly, § 178.97(b) is adopted in the final regulations as proposed.

ATF is amending § 178.102(c) by revising Example 2 at the end of the section to clarify that a firearms transaction is completed when the licensee executes the Form 4473 and the firearm is transferred to the purchaser. Some commenters believe the wording of the proposed regulation is confusing and implies that a firearms transaction is completed when the licensee executes the Form 4473, regardless of when the actual transfer of the firearm takes place.

The proposed regulation in § 178.125(e) would have required dealers to record in their records of disposition the identification number provided by NICS. ATF has determined that requirement is unnecessary since the final regulations require licensees to record the unique identification number provided by NICS on Form 4473 and to retain each Form 4473 for a period of

not less than 20 years after the date of sale or disposition. Accordingly, ATF is not amending the regulation.

Finally, section 178.125a(a) is being amended to provide that licensees are not required to comply with the provisions of § 178.102 when selling firearms from the licensee's personal collection, provided that the licensee has maintained the firearm as part of his or her personal collection for at least one year.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0544. Other collections of information contained in this final rule have been approved under control numbers: 1512–0520, 1512–0006, and 1512–0524 (§ 178.129(c)) and 1512–0129 and 1512–0526 (§ 178.129(d), (e), and (f)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this final rule are in 27 CFR 178.102, 178.124(c), 178.129(b), 178.131, and 178.150. This information is required to implement the provisions of Public Law 103–159, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The collections of information are required to ensure compliance with the law. The likely respondents and/or recordkeepers are individuals and businesses.

Estimated number of respondents: 106,000.

Estimated burden hours: 1 hour.

However, the above mentioned regulations which implement the Brady law require amendments to ATF Form 4473. In order to prevent a duplication of burden hours, the burden hours that are associated with the collections of information in these regulations (1,136,266 hours) will be reported under OMB control number 1512–0129, the Supporting Statement for ATF Form 4473, Firearms Transaction Record, Part I. The following paragraphs explain the additional burden hours.

Section 178.102 requires, with some exceptions, licensees to contact NICS before transferring any firearm to an unlicensed individual. The estimated total annual reporting and/or recordkeeping burden associated with this requirement is 824,000 hours. Section 178.124(c) requires licensees to record on Form 4473 the date the licensee contacts NICS and any identification number provided by NICS. The licensee must also verify the identity of the person acquiring the firearm by examining an identification document presented by the transferee. Form 4473 will include certain optional information about the purchaser, such as the person's social security number and alien registration number. Section 178.131 requires licensees to maintain certain records for firearms transactions not subject to a NICS check. The estimated total annual reporting and/or recordkeeping burden associated with §§ 178.124(c) and 178.131 is 308,266 hours. Section 178.129(b) requires licensees to retain a completed Form 4473 for a period of not less than 5 years where the transfer of a firearm is not made. The estimated total annual recordkeeping burden associated with this requirement is 4,000 hours. Section 178.150 provides for an alternative to NICS in certain geographical locations. Licensees must submit a written application to the Director containing certain information. The same requirement currently applies to the waiting period provision of the Brady law for transfers of handguns. Since this requirement was established in 1994, no licensee has qualified for an exception from the provisions of Brady based on geographical location. As such, ATF does not believe that there is any reporting and/or recordkeeping burden associated with the requirements of § 178.150 with regard to NICS.

Certain collections of information contained in § 178.129(b), previously approved under control numbers 1512–0520, 1512–0006, and 1512–0524, are merely being redesignated as § 178.129(c) in this final rule. Similarly, the collections of information in § 178.129(c), (d), and (e), previously approved under control numbers 1512–0129 and 1512–0526, are being redesignated as § 178.129(d), (e), and (f) in the final regulation.

Comments concerning the accuracy of these burden estimates and suggestions for reducing the burden should be directed to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

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

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

List of Subjects

Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

For the reasons discussed in the preamble, ATF amends 27 CFR Parts 178 and 179 as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.11 is amended by adding a definition for ''NICS'' to read as follows:

§ 178.11 Meaning of terms.

* * * * *

NICS. The National Instant Criminal Background Check System established by the Attorney General pursuant to 18 U.S.C. 922(t).

* * * * *

Par. 3. Section 178.73 is revised to read as follows:

§ 178.73 Notice of revocation, suspension, or imposition of civil fine.

(a) *Basis for action.* Whenever the regional director (compliance) has reason to believe that a licensee has willfully violated any provision of the Act or this part, a notice of revocation of the license, ATF Form 4500, may be issued. In addition, a notice of revocation, suspension, or imposition of a civil fine may be issued on ATF Form 4500 whenever the regional director (compliance) has reason to believe that a licensee has knowingly transferred a firearm to an unlicensed person and knowingly failed to comply with the requirements of 18 U.S.C. 922(t)(1) with respect to the transfer and, at the time that the transferee most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that the transferee's receipt of a firearm would violate 18 U.S.C. 922(g) or 922(n) or State law.

(b) *Issuance of notice.* The notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The regional director (compliance) shall afford the licensee 15 days from the date of receipt of the notice in which to request a hearing prior to suspension or revocation of the license, or imposition of a civil fine. If the licensee does not file a timely request for a hearing, the regional director (compliance) shall issue a final notice of suspension or revocation and/or imposition of a civil fine on ATF Form 4501, as provided in § 178.74.

Par. 4. Section 178.74 is revised to read as follows:

§ 178.74 Request for hearing after notice of suspension, revocation, or imposition of civil fine.

If a licensee desires a hearing after receipt of a notice of suspension or revocation of a license, or imposition of a civil fine, the licensee shall file a request, in duplicate, with the regional director (compliance) within 15 days after receipt of the notice of suspension or revocation of a license, or imposition of a civil fine. On receipt of such request, the regional director (compliance) shall, as expeditiously as possible, make necessary arrangements for the hearing and advise the licensee of the date, time, location and the name of the officer before whom the hearing will be held. Such notification shall be made no less than 10 days in advance of the date set for the hearing. On conclusion of the hearing and consideration of all the relevant presentations made by the licensee or the licensee's representative, the regional director (compliance) shall render a decision and shall prepare a brief summary of the findings and conclusions on which the decision is based. If the decision is that the license should be revoked, or, in actions under 18 U.S.C. 922(t)(5), that the license should be revoked or suspended, and/or that a civil fine should be imposed, a certified copy of the summary shall be furnished to the licensee with the final notice of revocation, suspension, or imposition of a civil fine on ATF Form 4501. If the decision is that the license should not be revoked, or in actions under 18 U.S.C. 922(t)(5), that the license should not be revoked or suspended, and a civil fine should not be imposed, the licensee shall be notified in writing.

Par. 5. Section 178.78 is revised to read as follows:

§ 178.78 Operations by licensee after notice.

In any case where denial, suspension, or revocation proceedings are pending before the Bureau of Alcohol, Tobacco and Firearms, or notice of denial, suspension, or revocation has been served on the licensee and he has filed timely request for a hearing, the license in the possession of the licensee shall remain in effect even though such license has expired, or the suspension or revocation date specified in the notice of revocation on Form 4500 served on the licensee has passed: *Provided,* That with respect to a license that has expired, the licensee has timely filed an application for the renewal of his license. If a licensee is dissatisfied with a posthearing decision revoking or suspending the license or denying the application or imposing a civil fine, as the case may be, he may, pursuant to 18 U.S.C. 923(f)(3), within 60 days after receipt of the final notice denying the application or revoking or suspending the license or imposing a civil fine, file a petition for judicial review of such action. Such petition should be filed with the U.S. district court for the district in which the applicant or licensee resides or has his principal place of business. In such case, when the regional director (compliance) finds that justice so requires, he may postpone the effective date of suspension or revocation of a license or authorize continued operations under the expired license, as applicable, pending judicial review.

Par. 6. Section 178.96 is amended by revising the first sentence in paragraph (b), and by revising paragraph (c) to read as follows:

§ 178.96 Out-of-State and mail order sales.

* * * * *

(b) A licensed importer, licensed manufacturer, or licensed dealer may sell a firearm that is not subject to the provisions of § 178.102(a) to a nonlicensee who does not appear in person at the licensee's business premises if the nonlicensee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee furnishes to the licensee the firearms transaction record, Form 4473, required by § 178.124. * * *

(c)(1) A licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun, and a licensed collector may sell or deliver a rifle or shotgun that is a curio or relic to a nonlicensed resident of a State other than the State in which the licensee's place of business is located if—

(i) The purchaser meets with the licensee in person at the licensee's premises to accomplish the transfer, sale, and delivery of the rifle or shotgun;

(ii) The licensed importer, licensed manufacturer, or licensed dealer complies with the provisions of § 178.102;

(iii) The purchaser furnishes to the licensed importer, licensed manufacturer, or licensed dealer the firearms transaction record, Form 4473, required by § 178.124; and

(iv) The sale, delivery, and receipt of the rifle or shotgun fully comply with the legal conditions of sale in both such States.

(2) For purposes of paragraph (c) of this section, any licensed manufacturer, licensed importer, or licensed dealer is presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both such States.

Par. 7. Section 178.97 is revised to read as follows:

§ 178.97 Loan or rental of firearms.

(a) A licensee may lend or rent a firearm to any person for temporary use off the premises of the licensee for lawful sporting purposes: *Provided,* That the delivery of the firearm to such person is not prohibited by § 178.99(b) or § 178.99(c), the licensee complies

with the requirements of § 178.102, and the licensee records such loan or rental in the records required to be kept by him under Subpart H of this part.

(b) A club, association, or similar organization temporarily furnishing firearms (whether by loan, rental, or otherwise) to participants in a skeet, trap, target, or similar shooting activity for use at the time and place such activity is held does not, unattended by other circumstances, cause such club, association, or similar organization to be engaged in the business of a dealer in firearms or as engaging in firearms transactions. Therefore, licensing and recordkeeping requirements contained in this part pertaining to firearms transactions would not apply to this temporary furnishing of firearms for use on premises on which such an activity is conducted.

Par. 8. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of firearms on and after November 30, 1998.

(a) *Background check.* Except as provided in paragraph (d) of this section, a licensed importer, licensed manufacturer, or licensed dealer (the licensee) shall not sell, deliver, or transfer a firearm to any other person who is not licensed under this part unless the licensee meets the following requirements:

(1) Before the completion of the transfer, the licensee has contacted NICS;

(2)(i) NICS informs the licensee that it has no information that receipt of the firearm by the transferee would be in violation of Federal or State law and provides the licensee with a unique identification number; or

(ii) Three business days (meaning days on which State offices are open) have elapsed from the date the licensee contacted NICS and NICS has not notified the licensee that receipt of the firearm by the transferee would be in violation of law; and

(3) The licensee verifies the identity of the transferee by examining the identification document presented in accordance with the provisions of § 178.124(c).

Example for paragraph (a). A licensee contacts NICS on Thursday, and gets a ''delayed'' response. The licensee does not get a further response from NICS. If State offices are not open on Saturday and Sunday, 3 business days would have elapsed on the following Tuesday. The licensee may transfer the firearm on the next day, Wednesday.

(b) *Transaction number.* In any transaction for which a licensee receives a transaction number from NICS (which shall include either a NICS transaction number or, in States where the State is recognized as a point of contact for NICS checks, a State transaction number), such number shall be recorded on a firearms transaction record, Form 4473, which shall be retained in the records of the licensee in accordance with the provisions of § 178.129. This applies regardless of whether the transaction is approved or denied by NICS, and regardless of whether the firearm is actually transferred.

(c) *Time limitation on NICS checks.* A NICS check conducted in accordance with paragraph (a) of this section may be relied upon by the licensee only for use in a single transaction, and for a period not to exceed 30 calendar days from the date that NICS was initially contacted. If the transaction is not completed within the 30-day period, the licensee shall initiate a new NICS check prior to completion of the transfer.

Example 1 for paragraph (c). A purchaser completes the Form 4473 on December 15, 1998, and a NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. However, the State imposes a 7-day waiting period on all firearms transactions, and the purchaser does not return to pick up the firearm until January 22, 1999. The licensee must conduct another NICS check before transferring the firearm to the purchaser.

Example 2 for paragraph (c). A purchaser completes the Form 4473 on January 25, 1999, and arranges for the purchase of a single firearm. A NICS check is initiated by the licensee on that date. The licensee is informed by NICS that the information available to the system does not indicate that receipt of the firearm by the transferee would be in violation of law, and a unique identification number is provided. The State imposes a 7-day waiting period on all firearms transactions, and the purchaser returns to pick up the firearm on February 15, 1999. Before the licensee executes the Form 4473, and the firearm is transferred, the purchaser decides to purchase an additional firearm. The transfer of these two firearms is considered a single transaction; accordingly, the licensee may add the second firearm to the Form 4473, and transfer that firearm without conducting another NICS check.

Example 3 for paragraph (c). A purchaser completes a Form 4473 on February 15, 1999. The licensee receives a unique identification number from NICS on that date, the Form 4473 is executed by the licensee, and the firearm is transferred. On February 20, 1999, the purchaser returns to the licensee's premises and wishes to purchase a second firearm. The purchase of the second firearm is a separate transaction; thus, a new NICS check must be initiated by the licensee.

(d) *Exceptions to NICS check.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a valid permit or license that—

(i) Allows the transferee to possess, acquire, or carry a firearm;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit or license is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by the transferee would be in violation of Federal, State, or local law: *Provided,* That on and after November 30, 1998, the information available to such official includes the NICS;

(2) The firearm is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(3) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a)(1) of this section is impracticable.

(e) The document referred to in paragraph (d)(1) of this section (or a copy thereof) shall be retained or the required information from the document shall be recorded on the firearms transaction record in accordance with the provisions of § 178.131.

(Approved by the Office of Management and Budget under control number 1512–0544)

Par. 9. Section 178.124 is amended by revising paragraph (c), by removing ''paragraph (c)(1)(ii)'' in paragraphs (d) and (e) and adding in its place ''paragraph (c)(3)(ii)'', by revising the first sentence in paragraph (f), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.124 Firearms transaction record.

* * * * *

(c)(1) Prior to making an over-the-counter transfer of a firearm to a nonlicensee who is a resident of the State in which the licensee's business premises is located, the licensed importer, licensed manufacturer, or licensed dealer so transferring the firearm shall obtain a Form 4473 from the transferee showing the transferee's name, sex, residence address (including county or similar political subdivision), date and place of birth; height, weight and race of the transferee; whether the transferee is a citizen of the United States; the transferee's State of residence; and certification by the transferee that the transferee is not prohibited by the Act from transporting or shipping a firearm in interstate or foreign commerce or receiving a firearm which has been shipped or transported

in interstate or foreign commerce or possessing a firearm in or affecting commerce.

(2) In order to facilitate the transfer of a firearm and enable NICS to verify the identity of the person acquiring the firearm, ATF Form 4473 also requests certain optional information. This information includes the transferee's social security number and alien registration number (if applicable). Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

(3) After the transferee has executed the Form 4473, the licensee:

(i) Shall verify the identity of the transferee by examining the identification document (as defined in § 178.11) presented, and shall note on the Form 4473 the type of identification used;

(ii) Shall, in the case of a transferee who is an alien legally in the United States, cause the transferee to present documentation establishing that the transferee is a resident of the State (as defined in § 178.11) in which the licensee's business premises is located, and shall note on the form the documentation used. Examples of acceptable documentation include utility bills or a lease agreement which show that the transferee has resided in the State continuously for at least 90 days prior to the transfer of the firearm; and

(iii) Shall comply with the requirements of § 178.102 and record on the form the date on which the licensee contacted the NICS, as well as any response provided by the system, including any identification number provided by the system.

(4) The licensee shall identify the firearm to be transferred by listing on the Form 4473 the name of the manufacturer, the name of the importer (if any), the type, model, caliber or gauge, and the serial number of the firearm.

(5) The licensee shall sign and date the form if the licensee does not know or have reasonable cause to believe that the transferee is disqualified by law from receiving the firearm and transfer the firearm described on the Form 4473.

* * * * *

(f) Form 4473 shall be submitted, in duplicate, to a licensed importer, licensed manufacturer, or licensed dealer by a transferee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction, who is not subject to the provisions of § 178.102(a), and who is a resident of the State in which the licensee's business premises are located. * * *

* * * * *

(Paragraph (c) approved by the Office of Management and Budget under control number 1512–0544; paragraph (f) approved by the Office of Management and Budget under control number 1512–0130; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

§ 178.124a [Amended]

Par. 10. Section 178.124a is amended by removing the period at the end of the introductory text of paragraph (e) and adding in its place a colon.

§ 178.125a [Amended]

Par. 11. Section 178.125a is amended by adding ''comply with the provisions of § 178.102 or'' after the phrase ''is not required to'' in the introductory text of paragraph (a).

Par. 12. Section 178.129 is amended by revising paragraph (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), by adding new paragraph (c), and by revising the parenthetical text at the end of the section to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Where a licensee has initiated a NICS check for a proposed firearms transaction, but the sale, delivery, or transfer of the firearm is not made, the licensee shall record any transaction number on the Form 4473, and retain the Form 4473 for a period of not less than 5 years after the date of the NICS inquiry. Forms 4473 shall be retained in the licensee's records as provided in § 178.124(b): *Provided,* That Forms 4473 with respect to which a sale, delivery or transfer did not take place shall be separately retained in alphabetical (by name of transferee) or chronological (by date of transferee's certification) order.

(c) *Statement of intent to obtain a handgun, reports of multiple sales or other disposition of pistols and revolvers, and reports of theft or loss of firearms.* Licensees shall retain each Form 5300.35 (Statement of Intent to Obtain a Handgun(s)) for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer, as defined in § 178.150(c). Licensees shall retain each copy of Form 3310.4 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers) for a period of not less than 5 years after the date of sale or other disposition. Licensees shall retain each copy of Form 3310.11 (Federal Firearms Licensee Theft/Loss Report) for a period of not less than 5 years after the date the theft or loss was reported to ATF.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control number 1512–0544; Paragraph (c) approved by the Office of Management and Budget under control numbers 1512–0520, 1512–0006, and 1512–0524; Paragraph (f) approved by the Office of Management and Budget under control number 1512–0526; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129)

§ 178.130 [Removed]

Par. 13. Section 178.130 is removed.

Par. 14. Section 178.131 is revised to read as follows:

§ 178.131 Firearms transactions not subject to a NICS check.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a firearm is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the NICS check prescribed by § 178.102(a) shall maintain the records required by paragraph (a) of this section.

(2) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(1), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(3) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(3) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(c).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part.

(Approved by the Office of Management and Budget under control number 1512–0544)

Par. 15. Section 178.150 is revised to read as follows:

§ 178.150 Alternative to NICS in certain geographical locations.

(a) The provisions of § 178.102(d)(3) shall be applicable when the Director has certified that compliance with the provisions of § 178.102(a)(1) is impracticable because:

(1) The ratio of the number of law enforcement officers of the State in

which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(2) The business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(3) There is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(b) A licensee who desires to obtain a certification under this section shall submit a written request to the Director. Each request shall be executed under the penalties of perjury and contain information sufficient for the Director to make such certification. Such information shall include statistical data, official reports, or other statements of government agencies pertaining to the ratio of law enforcement officers to the number of square miles of land area of a State and statements of government agencies and private utility companies regarding the absence of telecommunications facilities in the geographical area in which the licensee's business premises are located.

(c) For purposes of this section and § 178.129(c), the ''chief law enforcement officer'' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(Approved by the Office of Management and Budget under control number 1512–0544)

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 16. The authority citation for 27 CFR part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 17. Section 179.86 is amended by adding a sentence at the end of the section to read as follows:

§ 179.86 Action on application.

* * * In addition to any other records checks that may be conducted to determine whether the transfer, receipt, or possession of a firearm would place the transferee in violation of law, the Director shall contact the National Instant Criminal Background Check System.

Signed: October 1, 1998.

John W. Magaw,

Director.

Approved: October 16, 1998.

John P. Simpson,

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

[FR Doc. 98–28986 Filed 10–28–98; 8:45 am]

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H.R. 2616/P.L. 105–278

Charter School Expansion Act of 1998 (Oct. 22, 1998; 112 Stat. 2682)

H.R. 1659/P.L. 105–279

Mount St. Helens National Volcanic Monument Completion Act (Oct. 23, 1998; 112 Stat. 2690)

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