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Tuesday
May 4, 1999

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WASHINGTON, DC

WHEN: May 18, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–36]

RIN 0579–AA83

Karnal Bunt; Reclassification of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations by removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this change in the regulations, we are releasing from regulation most of the areas that had been designated as restricted areas for seed; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and removing the cleaning requirement for vegetables grown in those fields. Removing those areas that had been designated as restricted areas for seed from the regulations greatly reduces the total area in the southwestern United States that is regulated for Karnal bunt, and removing the planting prohibition and the vegetable cleaning requirement eases restrictions on field owners in the regulated areas. We are also amending the list of regulated areas to add several fields or areas in three Arizona counties to the list of regulated areas. These additions to the list of regulated areas are necessary due to the detection of bunted kernels in fields in those counties during 1998.

EFFECTIVE DATE: April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; telephone (301) 734–8899; fax 301–734–8584; e-mail: Stephen.R.Poe@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations).

On March 9, 1999, we published in the **Federal Register** (64 FR 11392–11401, Docket No. 96–016–34) a proposed rule to amend the regulations by simplifying the classification criteria for regulated articles; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and modifying the descriptions of the regulated areas in Arizona, California, New Mexico, and Texas to reflect the elimination of the restricted area for seed classification and to add new areas of Arizona in which bunted kernels were detected during sampling conducted in 1998. We also proposed to remove the requirement for cleaning soil and plant debris from vegetable crops grown in fields associated with Karnal bunt.

We solicited comments concerning our proposal for 30 days ending April 8, 1999. We received six comments by that date. They were from State agricultural agencies, a State wheat commission, and a grain and seed company. All six commenters supported the proposed rule. Five of those commenters did, however, raise issues related to the proposed rule or the Karnal bunt program. Those issues are discussed below.

Deregulation

Comment: The final rule should state that a regulated field will be released from regulation once it has produced a Karnal bunt host crop that tests negative for spores and bunted kernels.

Response: Although we have not made the change suggested by the commenter in this final rule, we are considering that suggestion as an option for the future, especially with regard to the fields that were determined in 1996 to have been planted with seed from a lot found to contain a bunted wheat kernel, since no bunted kernels were found in wheat grown in those fields. Because the planting of Karnal bunt host crops in regulated fields will only now be possible as a result of this final rule, the first host crop could not be planted until the fall of 1999 and would not be harvested until the spring of 2000. We will use that time to consider the opportunities that we may have for further deregulation such as that suggested by the commenter. In the event that we determine that it would be appropriate to pursue a deregulatory approach such as that suggested by the commenter, we will initiate rulemaking to amend the regulations in time for the results of post-harvest testing in the spring of 2000 to be taken into account.

Comment: APHIS should provide producers with a description of the long-term future of the Karnal bunt regulations that includes the specifics of a regulatory protocol for the eventual deregulation of Karnal bunt.

Response: We cannot, at the present time, predict the long-term future of the Karnal bunt regulations or specify a regulatory protocol for the eventual deregulation of Karnal bunt. Outstanding issues, most notably the continuing discussions with our trading partners as to whether Karnal bunt should be regarded as a quarantine pest or a grading issue, make it difficult to predict with any degree of certainty what our regulations might look like in the future. In addition, as noted in the response to the previous comment, we are exploring whether there may be opportunities for further deregulation. Our continuing Karnal bunt program, as well as any changes that might be made to it in the future, will be guided by the program's stated objectives of protecting export markets, protecting producers in uninfected areas, and providing as many

options as possible for producers in regulated areas.

Timeliness of Regulations

Comment: The 1999 growing season regulatory protocols must be provided in order for growers to be able to make educated decisions about their production and contract plans for the coming year.

Response: We have made every effort to ensure that this final rule is published and effective prior to the 1999 harvest season. By doing this, we will not only relieve restrictions on the movement of grain and seed harvested in the areas released from regulation, but we will also ensure that this rule is in place with ample time for growers to be able to consider their options prior to the fall planting season.

Surveys

Comment: The deregulation of areas appears to be legitimate as long as adequate and timely surveys will be conducted to ensure that the boundaries of the regulated area adequately encompass the infected area. However, the National Survey protocol for detecting Karnal bunt outside of regulated areas does not appear to be adequate for those purposes, especially in areas where spores have been found. (Conversely, another commenter stated that the grain produced in the areas removed from regulation should not be subjected to more stringent tests than grain from any other non-regulated area in the United States.)

Response: We agree that there is a need for maintaining adequate delimiting surveys and detection programs. In addition to the survey and detection activities that are carried out as part of the regulatory program within those areas of Arizona, California, New Mexico, and Texas that have been designated as regulated areas, we will continue to conduct our National Survey of all wheat production areas in the United States in order to gather information about the presence or absence of Karnal bunt. In the National Survey, composite wheat samples are collected, in proportion to wheat production, at points of aggregation near wheat production so that all samples are identifiable to at least the county level. The intensity of the National Survey provides a high level of confidence that Karnal bunt is not detectable in those parts of our wheat production system that contribute to the export trade and generates information about potential infections in new areas. Therefore, we believe that our ongoing regulatory program and National Survey activities will continue to provide the assurances sought by the commenter and by our trading partners regarding the Karnal bunt status of areas released from regulation, as well as areas outside the regulated areas.

Testing

Comment: The bunted kernel standard for the movement of grain from regulated areas is a concern because most of our trading partners have not recognized that standard. The standard for movement should not place our exports in jeopardy, as that would be in conflict with the Karnal bunt program's stated objective of protecting export markets. To that end, operational procedures should be developed that define the testing methodology and that new technologies should be considered that meet that objective.

Response: Although our use of the bunted kernel standard was not among the issues raised in the proposed rule, we would like to respond to this comment by stating that we are currently engaged in discussions with our trading partners regarding the appropriateness of using the bunted kernel standard—as opposed to a teliospore standard—to certify grain for international movement. Considerations such as new technologies and operational procedures that define testing methodology are part of those discussions. Using the bunted kernel standard, which we have followed since 1997, is consistent with our conclusion that the detection of spores alone does not allow us to make a conclusive determination that Karnal bunt disease is present in an area or article, but we believe that we must take the concerns of our trading partners seriously if we are to continue to protect our grain export markets. To that end, we are preparing a position paper on the use of the bunted kernel standard as opposed to a teliospore standard. That position paper, and our trading partners' response to it, will be used as we continue our consideration of this issue.

Quarantine Status of Karnal Bunt

Comment: Karnal bunt is not a dangerous plant pest, and the USDA has failed to educate the United States' trading partners as to the insignificance of the disease.

Response: The position that Karnal bunt is a grading or quality issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles. Indeed, we have raised that issue at every opportunity with our trading partners. However, until such time as our trading partners view the disease as a grading issue rather than a quarantine issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

Compensation

Comment: Compensation should continue to be made available to growers located in the areas that remain under regulation.

Response: The issue of compensation was not raised in the proposed rule and is, therefore, outside the scope of this final rule. Rather, compensation has been, and will continue to be, addressed in separate rulemakings that focus exclusively on that issue.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

By removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification, this rule releases certain areas in Arizona, California, New Mexico, and Texas from their designation as restricted areas for seed, which means that those areas will no longer be regulated areas under the Karnal bunt regulations. This will eliminate the requirement for the testing and treatment of seed grown in those areas. Further, this rule removes the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt and removes the cleaning requirement for vegetables grown in those fields. These changes will greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt and will ease restrictions on field owners in those areas that remain under regulation. Although this rule also adds several fields or areas in three Arizona counties to the list of regulated areas, their addition to that list will not result in any new restrictions because those fields and areas have been designated as regulated areas under the temporary designation provisions of § 301.89–3(d) since 1998 based on the detection of bunted kernels. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Karnal bunt regulations by removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this change in the regulations, we are releasing from regulation most of the areas that had been designated as restricted areas for seed; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and removing the cleaning requirement for vegetables grown in those fields. We are also adding several fields or areas in three Arizona counties to the list of regulated areas based on the detection of bunted kernels in fields in those counties during 1998.

Our modifications to the way regulated areas are classified will benefit the growers who have fields that had been designated as restricted areas for regulated articles other than seed and fields that are located in restricted areas for seed lying outside the surveillance areas. Growers in the areas that had been designated as surveillance areas will be largely unaffected by these changes. Removing those areas that had been designated as restricted areas for seed from the regulations will greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt.

Even though the restricted area for regulated articles other than seed classification will be removed under this rule, those fields that had been designated as such will remain under regulation because they are still either part of a regulated area or are themselves regulated areas. However, this rule will have the effect of relaxing the restrictions that have applied to the fields. Growers will have the option of planting wheat, durum wheat, or triticale in the fields, which is an option that had not been available to them. Wheat, durum wheat, or triticale grown as grain (not seed) in those fields will be eligible for unrestricted movement under a certificate if it is tested and found free from bunted kernels prior to its movement from the field or before it is commingled with other grain. If bunted kernels are found, the grain will still be eligible for movement, but only under a limited permit that requires that the grain be moved to a specified destination for specified handling, utilization, or processing that will destroy the Karnal bunt or mitigate the risk of its spread. These are the same conditions that had been applied to the movement of grain from surveillance areas.

There are about 60 growers located in areas that had been designated as restricted areas for regulated articles other than seed (approximately 18,000 agricultural acres). The number, if any, of these growers who will now choose to plant wheat is unknown. In deciding on whether to plant wheat rather than another crop, growers will no doubt weigh a variety of factors, including the likelihood of producing Karnal-bunt-positive wheat, the likelihood of receiving compensation for any positive wheat that is produced, and the profitability of the alternative crop (which can be comparable, or nearly comparable, to the profitability of wheat). However, information as to how individual growers might respond to those factors, and thus whether they will choose to resume planting wheat, is not available.

Vegetable growers with fields that had been in areas designated as restricted areas for regulated articles other than seed will also benefit from the removal of that regulatory category, as it will result in the lifting of the cleaning requirement that had applied to vegetables grown in those fields. The benefit is not likely to be significant for most growers, since about 90 percent of the soil is routinely removed from vegetables during harvesting. There are about 10 vegetable growers with fields in areas that had been designated as restricted areas for regulated articles other than seed.

Wheat seed growers with fields in areas that had been designated as restricted areas for seed, but that are located outside the areas that had been designated as surveillance areas, will also benefit from the modifications to the classification of regulated areas, since most will no longer be regulated. In the absence of regulation, they will be able to grow and move commercial wheat seed without restriction. These growers had been able to move commercial wheat seed outside the regulated area only if it tested negative for Karnal bunt, had been chlorine drenched, and had been treated with a fungicide. The cost of treatment, but not testing, was borne by those growers. The cost of seed treatment varies widely among seed handlers, depending largely on labor and overhead costs. One handler, for example, calculated the total cost of treating 100 lbs. of seed at $7.10, while another handler calculated that cost at $3.10. Regardless of the cost, there is reason to believe that most seed handlers will continue the fungicide treatments, even with this final rule, with the costs of those fungicide treatments continuing to be passed along to purchasers of the seed. Several handlers reported that they routinely treated seed prior to 1996, before Karnal bunt was detected and restrictions were imposed. That, plus the likelihood that only a small portion of the acreage in the restricted areas for seed will be planted with seed, suggest that the benefits of this rule will be minimal in this respect. We estimate that only about 7 percent of the agricultural acreage in restricted areas for seed is planted with wheat, and of that acreage, only about 10 percent is planted for seed. This disparity in favor of grain over seed is not expected to change in the near term, regardless of this regulatory change, given the current poor market conditions for seed and the fact that stored seed from previous years remains available. There are approximately 563 wheat growers in areas that had been designated as restricted areas for seed. The restricted areas for seed encompassed about 1,958,000 agricultural acres, or 88 percent of the total regulated area of 2,214,000 agricultural acres.

Wheat growers in areas that had been designated as surveillance areas will be largely unaffected by this rule because they will remain regulated and will be subject to the same restrictions on the movement of regulated articles as they had been. There are 149 wheat growers in areas that had been designated as surveillance areas, which together comprise about 239,000 agricultural acres.

Also, this rule adds certain areas in Arizona to the list of regulated areas due to the detection of bunted kernels in those areas during sampling conducted in 1998. Because all of these new areas are located in areas that had been designated as restricted areas for seed, their proposed designation as regulated areas under this rule is not expected to have a significant effect. The changes that will result from the redesignation are that commercial lots of wheat seed will no longer be eligible for movement from those areas and grain grown in those areas will have to be tested for bunted kernels before being moved from the regulated area. We do not believe that adding these fields or areas to the list of regulated areas will have a significant economic impact on growers because, as noted above, little commercial seed was produced in those areas. Further, growers have been able to plant alternative crops without

restriction and grain could be grown subject to testing prior to movement from the regulated area.

Economic Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Those entities most likely to be affected by this rule are wheat growers located in areas that had been designated as restricted areas for seed that will no longer be regulated, vegetable growers who will no longer have to clean their crops before movement, and wheat growers located in areas that are being added to the regulated areas due to the detection of Karnal bunt in 1998.

We estimate that there are approximately 588 wheat growers (324 in Arizona, 21 in California, 200 in New Mexico, and 43 in Texas) located in those portions of the former restricted areas that will no longer be regulated. We estimate that there are 60 growers of non-wheat crops located in areas that had been designated as restricted areas for regulated articles other than seed who will no longer be required to clean their crops as a condition of movement. Finally, we estimate that there are seven wheat growers in Arizona who have fields located in areas that had been designated as restricted areas for seed that have been added to the list of regulated areas. Most of the wheat growers are assumed to have gross receipts of less than $0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic impact of the rule will be mostly on small entities.

Growers located in areas that had been designated as restricted areas for regulated articles other than seed and growers in areas that had been designated as restricted areas for seed will benefit from this rule. The addition of certain areas in Arizona to the list of regulated areas will have a negative economic impact on affected growers. However, for the reasons discussed above, neither aspect of this rule is expected to have a significant economic impact on a substantial number of entities, large or small.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–1 [Amended]

2. In § 301.89–1, the definition of *distinct definable area* is amended by removing the words ‘‘, or, in the case of restricted areas, as determined by an inspector’’.

3. In § 301.89–3, paragraphs (e) and (f) are revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel).

(f) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road, Unit 134, Riverdale, MD 20737–1236):

Arizona

La Paz County. Beginning at the point where the Colorado River intersects the north side of sec. 32, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 36, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the intersection of the Colorado River; then northwest along the Colorado River to the point of beginning; and

Beginning at the northeast corner of sec. 22, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 34, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the northern side of sec. 21, T. 6 N., R. 22 W.; then east to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 33, T. 6 S., R. 5 W.; then west to the southwest corner of sec. 32, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 5, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 4, T. 5 S., R. 5 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 25, T. 1 S., R. 1 E. and the intersection of the Maricopa/Pinal County line; west to the southwest corner of sec. 28, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 4, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 31, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 31, T. 4 N., R. 2 W.; then east to the northeast corner of sec. 36, T. 4 N., R. 1 W.; then south to the southeast corner of sec. 36, T. 4 N., R. 1 W.; then east to the northeast corner of sec. 5, T. 3 N., R. 2 E.; then south to the southeast corner of sec. 32, T. 2 N., R. 2 E.; then east to the northeast corner of sec. 6, T. 1 N., R. 3 E.; then south to the southeast corner of sec. 7, T. 1 S., R. 3 E.; then west to the southwest corner of sec. 10, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 28, T. 1 S., R.

2 E.; then west to the intersection of the Maricopa/Pinal county line; then north, west and south along the county line to the point of beginning; and

Beginning at the intersection of Interstate 10 and the Maricopa/Pinal County line; then east and north along the county line to the northeast corner of sec. 1, T. 2 S., R. 7 E.; then west to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then north to the northeast corner of sec. 31, T. 1 N., R. 7 E.; then west to the northwest corner of sec. 31, T. 1 N., R. 6 E.; then north to the northeast corner of sec. 1, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 6, T. 2 N., R. 5 E.; then south to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 2, T. 1 N., R. 4 E.; then south to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the intersection of Interstate 10; then south and east to the point of beginning; and

The following individual fields in Maricopa County are regulated areas:

301060505
301060506
301060601
301060602
301060603
301060604
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
306013222
306013231
306020404
306020501
306020601
306020623
316131901
316131904
316132302
316132604

Pinal County. Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 6, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 2, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 14, T. 3 S., R. 8 E.; then west to the southeast corner of sec. 14, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 26, T. 4 S., R. 6 E.; then west to the southeast corner of sec. 26, T. 4 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 19, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 13, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 16, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 9, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 6, T. 4 S., R. 4 E.; then north to the northwest corner of sec. 6, T. 4 S., R. 4 E.; then east to the northwest corner of sec. 6, T. 4 S., R. 5 E.; then north to the intersection of the Maricopa/Pinal County line; then east and north along the county line to the point of beginning; and

The following individual fields in Pinal County are regulated areas:

308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309050104
309050109
309050207

Yuma County. The following individual fields in Yuma County are regulated areas:

321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517
321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

California

Imperial County. Beginning at the intersection of the Riverside/Imperial County line and the California/Arizona State line; then west to the northwest corner of sec. 1, T. 9 S., R. 21 E.; the south to the California/Arizona State line; then east and north along the State line to the point of beginning.

Riverside County. Beginning at the intersection of the Riverside/ Imperial County line and the California/Arizona State line; then west to the southwest corner of sec. 31, T. 8 S., R. 22 E.; then north to the northwest corner of sec. 30, T. 7 S., R. 22 E.; then north and northeast along the Palo Verde Valley agriculture area to the intersection of the California/Arizona State line; then south along the State line to the point of beginning.

New Mexico

Dona Ana County. The following individual fields in Dona Ana County are regulated areas:

113040501
113040502
113040506
113040507
113040508
113040601
113040602
113040702
113040902
113042601
113042602
113042707
113042708
113043401
113043407
113043503
113043508
113043509
113050201
113050202
113050301
113060701
113060702
113060703
113060801
113060809
113060901
113060902
113070702
113072701
113072702
113072703
113072704
113072705
113072706
113173103
113210401
113210402
113210403
113210406
113210407
113210808
113212103
113212802
113212806
113241601
113242708

Hidalgo County. The following individual fields in Hidalgo County are regulated areas:

123272403
123353001

Luna County. The following individual fields in Luna County are regulated areas:

129011301
129012201
129013003
129013006
129022502
129060806
129060901
129060902
129062001
129062801
129062802
129232801
129232804
129232805
129232806
129292404
129300506
129300608
129301104
129301301
129301401
129301701
129301801
129301806
129302001
129302702
129303302
129440601
129440602
129440701
129440702
129440703
129440708
129440801
129441701

Sierra County. The following individual fields in Sierra County are regulated areas:

151013401
151441201
151441202
151441306
151442201
151442601
151442602
151442603
151442604
151442605
151442606
151442607
151442608
151442609
151442610
151442611
151442612
151442613
151442614
151442701
151443501
151443502
151443503
151443601
151443602
151443603
151443604
151451306
151453001
151453101
151453102
151453103
151453104
151502801

Texas

El Paso County. The following individual fields in El Paso County are regulated areas:

441141301
441142301
441142302
441142303
441142304
441142305
441142306
441142307
441142401
441142402
441142403
441142404
441241301
441241302
441252801
441252803
441252804
441252901
441253201
441253302
441253401

Hudspeth County. The following individual fields in Hudspeth County are regulated areas:

429050701
429050702
429070101
429070102

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude –99.13473 W.; then north along the line of longitude –99.13473 W to the line of latitude 31.31004 N.; then east along the line of latitude 31.31004 N. to the line of longitude –99.11427 W.; then north along the line of longitude –99.11427 W to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south to the point of beginning.

San Saba County. Beginning at the San Saba/Mills County line and the line of longitude –98.5851 W.; then south along the line of longitude –98.5851 W to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude –98.903233 W.; then north along the line of longitude –98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.3100819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning; and

Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude –99.063487 W.; then south along the line of longitude –99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

4. Section 301.89–4 is revised to read as follows:

§ 301.89–4 Planting.

Wheat, durum wheat, and triticale may be planted in all fields within a regulated area. All wheat seed, durum wheat seed, and triticale seed that originates within a regulated area must be tested and found free from spores and bunted wheat kernels, then treated with a fungicide in accordance with § 301.89–13(d), before it may be planted within a regulated area.

§ 301.89–6 [Amended]

5. Section 301.89–6 is amended as follows:

a. In paragraph (b), the word ''surveillance'' is removed and the word ''regulated'' is added in its place.

b. Paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

§ 301.89–12 [Amended]

6. In § 301.89–12, paragraph (b) is removed and reserved.

§ 301.89–13 [Amended]

7. In § 301.89–13, paragraph (f) is removed.

Done in Washington, DC, this 28th day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11128 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV99–979–1 IFR]

Melons Grown in South Texas; Change in Container Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the handling regulation

currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order. The marketing order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (committee). This rule changes the dimensions of bulk containers used for shipping honeydew melons, requires these containers to be octagonal or rectangular in shape, and adds a dimension tolerance for that container. It also adds provisions allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, and removes two experimental containers that have not been used by the industry for several years. These changes were unanimously recommended by the committee and are expected to enable handlers to compete more effectively in the marketplace.

DATES: Effective May 5, 1999; comments received by July 6, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule changes the dimensions and specifies the shapes of bulk containers used for shipping honeydew melons, adds a dimension tolerance for that container, adds procedures that allow the committee to approve the use of experimental containers and melon shipments for experimental purposes, and removes two experimental containers that have not been used by the industry for several years. These changes are expected to enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion in the industry. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate the handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

Changes to the Bulk Container Requirements for Honeydew Melons

Section 979.304 of the order's rules and regulations sets container requirements for both cantaloupes and honeydew melons. Only honeydews are authorized to be packed in bulk containers. Thus, these changes to bulk container requirements do not apply to cantaloupes.

Currently, § 979.304(b)(4) authorizes the use of a bulk container for honeydew melons and specifies that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The phrase ''or similar dimensions'' was included to provide flexibility recognizing that the dimensions of containers sometimes are a little less or more than those specified in the regulation. The committee now believes, however, that the provisions are too flexible, and that the lack of specificity could result in administrative, compliance, and enforcement problems.

It now believes that a more precise tolerance is needed so that there is no room for misinterpretation by the industry. The committee, therefore, recommended removing the phrase ''or similar dimensions'' and adding in its place provisions establishing a dimension tolerance of 1½ inch for each dimension. The 1½ inch tolerance for each dimension for this container will allow handlers to pack honeydew melons in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation will prevent misunderstandings, and provide handlers the flexibility to use bulk containers with slight dimension variations when packing honeydew melons.

The committee also recommended allowing the depth of the bulk container to range between 24 and 36 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container, if they desire. The

industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to this committee recommendation for increased container flexibility.

The committee further recommended that the shape of bulk containers used for honeydew melons be rectangular or octagonal. Currently, these are the only shapes used by handlers, and the limitation will not impose an added burden on handlers. The change is expected to foster compliance and simplify enforcement. Last season a total of 1,727 bulk containers were shipped by the industry, compared to 1,655 containers in 1997. Demand for bulk containers has increased in recent years because their use results in reduced costs to receivers. Bulk bins can be re-used, whereas other containers cannot. The cost of disposing of used containers has increased.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The market for both cantaloupes and honeydew melons continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Currently, except for an experimental honeydew pony carton that is removed by this rule, there are no provisions in place allowing the committee to approve melon shipments for experimental purposes nor in experimental containers unless informal rulemaking is initiated. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those currently authorized by the regulations. The industry currently uses only fiberboard containers, and they are interested in experimenting with plastic bins.

Not being able to respond quickly to market demands for testing different types of melon containers could cause the South Texas melon industry to lose sales to competing melon-producing areas. Competition from other melon production areas demands that the Texas melon industry have the ability to quickly respond to buyer, retailer, and consumer demands for new containers. The committee may become aware of the need for new containers during the shipping season. The shipping season normally runs from May 1 through June 20 each year. For the committee to respond quickly to market needs for containers not currently authorized, it should have flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to better meet buyers' needs.

In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed to meet competition from other growing areas, and buyers' needs. Some handlers have expressed an interest in experimenting with the shipment of cantaloupe and honeydew melons in the same container.

Establishing provisions in the regulations to allow the committee to approve the use of experimental containers would allow the industry to respond quickly to market needs for containers not currently approved under the order's container regulations. Establishing provisions in the regulations to allow the committee to approve shipments for experimental purposes would allow the industry to test different types of melon shipments when needed.

Safeguards for these types of shipments are currently specified in paragraph (f) of § 979.304. A handler wanting an exemption for an experimental container or experimental use would apply to the committee for a Certificate of Privilege. The Certificate would be issued by the committee after consideration of the application. Handlers using a Certificate of Privilege would then be required to report each exempt shipment to the committee. This will enable the committee to easily track such shipments, and ensure they are in compliance with the order's rules and regulations.

Once the committee approves the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers and other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers in the regulations.

Removal of Two Experimental Containers

An experimental honeydew pony carton added in 1985 to paragraph (e)(3) and a cantaloupe carton added in 1990 to paragraph (e)(4) in § 979.304 have not been used for several years. The committee, therefore, recommended that they be removed from the handling regulation.

Other Changes in the Regulations

Currently, in § 979.304(c)(4) the name of one of the designated inspection offices and the telephone area codes of the designated inspection offices are incorrect. The name of the inspection office has been changed to ''Texas Cooperative Inspection Program'' office and the telephone area codes have changed from ''210'' to ''956''. The committee recommended that the regulation be updated to reflect these changes.

In addition, in § 979.180 and § 979.304, the word ''cantaloup'' is misspelled. To correct the misspelling, all references to ''cantaloup'' should be changed to ''cantaloupe.''

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the 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 14 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 33 melon growers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing melons. For the 1997–98 marketing year, 6,770 acres of production were shipped by the industry's 14 handlers; the average acreage and median acreage handled totaled 484 acres and 417 acres, respectively. In terms of production value, total revenues from the 14

handlers were estimated to be $16.4 million.

The Rio Grande Valley melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate commodities, like onions.

Based on the SBA's definition of small entities, the committee estimates that a majority of the 14 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, the majority of growers may be classified as small entities.

This rule changes the container regulation to accurately identify the shapes and dimensions of bulk containers handlers use for shipping honeydew melons, adds procedures allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, removes two experimental containers that have not been used by the industry for several years, and makes several minor modifications to update the regulations. These changes are expected to enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

At its meeting on March 30, 1999, the committee unanimously recommended revising § 979.304 as follows:

(1) Modify the bulk container to accurately identify the shapes and dimensions of bulk containers used for shipping honeydew melons;

(2) Add provisions to allow the committee to approve the use of experimental containers and melon shipments for experimental purposes;

(3) Remove two experimental containers that have not been used by the industry for several years; and

(4) Make several minor modifications to update the regulations.

Changes to the Bulk Container Requirements for Honeydew Melons

Currently, § 979.304(b)(4) authorizes the use of a bulk container for honeydew melons and specifies that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The committee recommended that the regulation specify that the bulk containers be rectangular or octagonal, the types of containers currently being used by the industry, in order to help administer the program. Making the regulation more specific will foster compliance and simplify enforcement. (Last season 1,727 of these bulk containers were shipped by the industry.) Specifying the shape of the bulk container in the regulation would clear up any misunderstanding that all shapes of bulk containers may be used for shipping honeydew melons.

The regulation currently does not provide specific tolerances on the container dimensions, and the committee does not know exactly how ''similar dimensions'' is being interpreted. Differences in interpretation among handlers and the industry regarding the phrase ''or similar dimensions'' could cause problems enforcing the marketing order program. A more precise tolerance is needed so that there is no room for misinterpretation by the industry. In order to clarify the industry's intentions, the committee recommended removing the phrase ''or similar dimensions'' and adding in its place, ''A tolerance of 1½ inch for each dimension shall be permitted.'' The committee believes the recommendation to provide a 1½ inch tolerance for each dimension on this container will provide handlers some flexibility, with some preciseness, to pack honeydew melons in containers with slightly different dimensions from the sizes specified in the regulation. Identifying specific dimension tolerances in the regulation would prevent possible misunderstanding and would give handlers the flexibility to use bulk containers with slightly different dimensions from the sizes specified in the regulation.

The committee also recommended increasing the depth allowance of the bulk container by 12 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container.

Adding tolerances to the dimensions of the currently approved bulk container and increasing the depth allowance will allow the melon industry to accept containers with slight dimension variations from box manufacturers, which will give handlers additional flexibility.

The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to the committee's recommendation to increase the depth allowance of the container by an additional 12 inches to permit a range from 24 to 36 inches deep.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The marketplace continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Currently, except for an experimental honeydew pony carton provision that is removed by this rule, there are no procedures in place to allow the committee to approve melon shipments for experimental purposes nor in experimental containers unless they initiate informal rulemaking. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those currently authorized by the regulations. The industry currently uses only fiberboard containers and they are interested in experimenting with plastic bins. The committee does not currently have the flexibility to react quickly to the need for containers not currently approved for South Texas melon shipments. Not being able to respond quickly to market demands for testing different types of melon containers could cause the South Texas melon industry to lose sales to competing melon-producing areas.

Competition from other melon production areas demands that the Texas melon industry be able to quickly respond to buyer, retailer, and consumer demands for new containers. Because

the melon regulatory period begins May 1 each year and runs through June 20, the committee is not able to meet, approve regulatory changes, and promptly complete the rulemaking process in order to approve various types of experimental containers. The industry may not be aware of the need for new containers until they are in the middle of their shipping season. For the committee to respond quickly to market needs for containers which are not currently authorized, it must have the flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to meet the competition from other areas and better meet buyers' needs. In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed. As mentioned before, some handlers have expressed an interest in experimenting with the shipment of cantaloupes and honeydew melons in the same container.

Establishing provisions to allow the committee to approve the use of experimental containers would allow the industry to respond quickly to market needs for containers not currently approved under the order's container regulations, and establishing procedures to authorize the committee to approve shipments for experimental purposes would allow the industry to test different types of melon shipments when needed. Because the committee has established safeguards for these types of experimental shipments under paragraph (f) of the handling regulation, they will be able to easily track their use. Once the committee authorizes the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers or other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers.

Removal of Two Experimental Containers

Two experimental containers in (e)(3) (a honeydew pony carton added in 1985) and (e)(4) (a cantaloupe carton added in 1990) are obsolete and have not been used for several years, and the committee recommended that they be removed from the handling regulation.

Other Changes in the Regulations

Currently, in § 979.304(c)(4) the name and telephone area codes of the inspection office are incorrect. The name of the inspection office has been changed to ''Texas Cooperative Inspection Program'' office and the telephone area codes have changed from ''210'' to ''956.'' The committee recommended that the regulation be updated to reflect these changes.

In Marketing Order No. 979 the correct spelling of ''cantaloupe'' is used, and in § 979.180 and § 979.304, ''cantaloup'' is misspelled. To correct the misspelling and for consistency, all references to ''cantaloup'' should be changed to ''cantaloupe.''

This rule change would permit the South Texas melon industry to experiment with different types of containers prior to adding them to their approved container list. The committee believes this would effectively accommodate retailer and customer needs.

The committee recommended these changes to assist the consuming public in receiving Texas melons in containers they desire. Permitting the South Texas melon industry to experiment with different types of containers without the need for rulemaking and adding tolerances to the currently approved honeydew bulk container has small entity orientation.

An alternative to the recommended changes would be to keep the regulations as they are, however:

(1) It was the committee's desire to come up with a more workable bulk honeydew container regulation to make it more precise and eliminate potential problems. Not permitting a 1½ inch tolerance for each dimension on the bulk container could prevent the industry from marketing honeydew melons in containers which might be manufactured slightly different from the sizes specified in the regulation.

(2) Not permitting the committee to quickly approve shipments for experimental purposes exempt from regulations or in experimental containers without rulemaking could hinder the industry's ability to quickly respond to market needs and prevent them from marketing more melons. Not providing the committee the flexibility to quickly respond to market demands for test containers or shipments could result in the industry losing opportunities to other melon-producing areas.

(3) The two permanent experimental containers are no longer needed because the containers have not been used for a number of years and a new section is being added to make it possible for the committee to quickly approve the use of experimental containers.

(4) Not updating the name and telephone numbers of the inspection office to accurately reflect the correct information could cause confusion in the industry.

Although authorizing melon shipments for experimental purposes and the use of experimental containers would impose some additional reporting and recordkeeping requirements on melon handlers, this would be minimal. Currently, handlers making shipments of melons for special purposes, including experimental, are required to obtain a Certificate of Privilege to notify the committee of their intent to ship melons for these purposes. Also, handlers must prepare a special purpose shipment report on each shipment and forward it to the committee. The committee estimates that approximately two to four handlers might request approval for the use of experimental containers, which would increase the total reporting and recordkeeping burden by approximately .1 to .2 hours, and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the March 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The committee itself is composed of 10 members, of which 9 are growers and handlers, and one represents the public. Also, the committee has a subcommittee to review certain issues and make recommendations to the committee. The subcommittee met on January 28, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views. Finally, interested

persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on changes to the handling regulation currently prescribed under the South Texas melon marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements for bulk containers for honeydew melons and provides additional opportunities for the industry to ship melons; (2) the committee needs this rule to be in place for the 1999 season beginning May 1, 1999, so the industry may take advantage of these options; (3) the committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 979.180 [Amended]

2. In § 979.180, the word ''cantaloups'' is revised to read ''cantaloupes'' everywhere it appears.

3. In § 979.304, paragraphs (b)(4), (c)(4), and (e)(3) are revised, paragraph (e)(4) is removed, and paragraph (e)(5) is redesignated as paragraph (e)(4) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(b) * * *

(4) Honeydew melons may be packed in rectangular or octagonal bulk containers having dimensions of 48 inches long by 40 inches wide by 24 to 36 inches deep. A tolerance of 1½ inch for each dimension shall be permitted.

* * * * *

(c) * * *

(4) Designated inspection stations will be located at the Texas Cooperative Inspection Program Office, 1301 W. Expressway, Alamo (Phone (956) 787–4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo (Phone (956) 723–9178 or 9170), to be available for handlers who do not have permanent packing facilities recognized by the committee.

* * * * *

(e) * * *

(3) *Experimental shipments.* (i) Upon approval by the committee, melons may be shipped for experimental purposes exempt from the container requirements specified in paragraph (b) of this section, but shall meet the grade and inspection requirements of paragraphs (a) and (c) of this section and the assessment requirements specified in § 979.219: *Provided,* That the melons are handled in accordance with safeguard provisions of paragraph (f) of this section.

(ii) Upon approval of the committee, melons may be shipped for testing in types and sizes of containers other than those specified in paragraphs (b) and (e)(4) of this section: *Provided,* That the melons are handled in accordance with the provisions of paragraph (f) of this section.

* * * * *

4. In § 979.304, the words ''cantaloup'', ''cantaloups'', and ''Cantaloups'' are revised to read ''cantaloupe'', ''cantaloupes'' and ''Cantaloupes'', respectively everywhere they appear.

Dated: April 28, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11077 Filed 5–3–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–2 FR]

Dried Prunes Produced in California; Undersized Regulation for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1999–2000 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes expected at the end of the 1998–99 crop year by approximately 6,700 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 1999–2000 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter, and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 1999, through July 31, 2000, and was unanimously recommended by the Committee at a December 1, 1998, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes * * *'' Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975 and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. During the 1998–99 crop year, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). At its meeting on December 1, 1998, the Committee recognized that the 1998–99 prune crop is about 50% of the normal size; however, with the large inventories and anticipated large 1999–2000 prune crop, the Committee unanimously recommended continuing with volume controls for the 1999–2000 crop year by proposing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. This regulation will be in effect from August 1, 1999, through July 31, 2000.

The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes as of July 31, 1999. This rule will continue to remove primarily small sized prunes from human consumption channels, consistent with the undersized regulation that was implemented for the 1998–99 crop year. It is estimated that approximately 6,700 natural condition tons of small prunes will be removed from human consumption channels during the 1999–2000 crop year. This will leave sufficient prunes to fill domestic and foreign trade demand during the 1999–2000 crop year, and provide an adequate carryout on July 31, 2000, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is about 38,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A

worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing into the next century (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1997–98 crop years, the yield ranged from 1.5 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) California's continued excess supply situation. The production of these small sizes ranged from 2,575 to 8,778 natural condition tons during the 1990–91 through the 1997–98 crop years. The Committee concluded that it had to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 1999–2000 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops (1994–95 through 1997–98) of over 180,000 natural condition tons. Further burdening this oversupply situation will be large California prune crops over the next few years caused by the new prune plantings in recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop years, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 crop prune is exceptionally light, about 50% of normal size (103,000 tons), due to the unusually cool and wet weather conditions caused by the weather phenomenon known as El Nino. Even though this year's small prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine years. Another large crop of about 200,000 natural condition tons is expected for the 1999–2000 crop year, partly because of an anticipated increase in bearing acreage, and this will add to the continuing oversupply.

Because of the oversupply situation during the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes declined to $40–50 per ton. Consequently, producers lost about $260–270 per ton on every ton they delivered to handlers during 1997–98. The lower pricing of the smaller prunes continued in 1998–99, and is expected to continue as an incentive in future crop years to convince producers to produce the larger sizes needed to help the industry better meet the increasing market demand for larger size prunes used for pitted prunes.

The 1998–99 undersized prune rule of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes has expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 1998, was 88,840 natural condition tons, and only about 2,400 natural condition tons of dried prunes are expected to be removed from the 1998–99 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 1999–2000 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 1999–2000 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings will only be applicable when supply conditions warrant the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 54 percent of parity during the 1992 through 1997 seasons, and is in a downward trend. As discussed later, the average grower price for prunes during the 1999–2000 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control. The smaller diameter openings of 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

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 orders issued pursuant to the Act, and the 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 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 8 out of 20 handlers (40%) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60%) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 90 producers, or about 7% of the 1,250 total producers, could be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1999–2000 crop year for

volume control purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. Since prune handlers already use 24/32 and 30/32 grader screens, small and large producers and handlers will not incur extra costs to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings will be the disposal of additional undersized prune tonnage (about 6,700 natural condition tons) to nonhuman consumption outlets as required by the order. With the less restrictive openings, only 5,635 natural condition tons or 3.3 percent of the marketable production has been removed on average over the past eight crop years since 1990–91. The more restrictive openings currently in place for 1998–99 are expected to remove only 2,400 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes on July 31, 1999. Implementation of the more restrictive openings in 1999–2000 is expected to reduce the surplus by about 6,700 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys, which account for over 99 percent of the State's production, the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependant on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 6,700 tons) to nonhuman consumption outlets. These costs are expected to be minimal, and will be offset by the benefits derived by the elimination of some of the excess supply of small sized prunes.

At the December 1, 1998, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak with producers losing about $260–270 on every ton they deliver to handlers. The 1998–99 grower field price for 24/32 screen French prunes is ranging between $40 and $50 per ton, just like last crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion and research) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260-270 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories will result in higher season-average prices which will benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets will eliminate an estimated 6,700 tons of small-sized dried prunes during the 1999–2000 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 126,485 tons of natural condition prunes on July 31, 1998, the end of the 1997–98 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 38,000 natural condition tons. This leaves an inventory surplus of over 88,000 tons which will likely take the industry several years to market. The small 1998–99 prune crop and undersized regulation will help reduce the surplus, but the anticipated large 1999–2000 prune crop is expected to bring supplies further out-of-balance with demand.

Further burdening this oversupply situation will be large California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop year, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 prune crop is expected to be about 50% of normal size (103,000 natural condition tons). Even though this year's small prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine years. In addition, the 1999–2000 prune crop is expected to be about 200,000 tons, further increasing the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this action, the trade should begin taking a position early in the season for its dried prune needs, which will help firm up market prices and eventually reflect a higher overall price to the producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns will increase because producers will be producing less tonnage of small sized fruit at a $260–270 per ton loss. Instead producers will be receiving the higher prices paid for the larger sizes.

For the 1993–94 through the 1997–98 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $827 per ton during the 1997–98 crop year. The season average price received by producers averaged about 54 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1998–99 season is expected to be about $790 per ton, or about 41 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee

believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control.

Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. 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.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members, of which seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for the second year, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on January 25, 1999 (64 FR 3660). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 15, 1999. No comments were received.

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

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.406 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.406 Undersized prune regulation for the 1999–2000 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1999–2000 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: For French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: April 27, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11078 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF96

Codes and Standards: IEEE National Consensus Standard; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on April 13, 1999 (64 FR 17944), that incorporates by reference IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. This action is necessary to correct an erroneous reference.

EFFECTIVE DATE: The final rule is effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, **Federal Register** Liaison Officer, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 17946, in the third column, in the codified text at § 50.55a(h)(1), on the fourteenth and twenty-first lines from the top, and at § 50.55a(h)(2) on the twenty-eighth line from the top ''Std. 279–1971'' should be corrected to read ''Std. 279.''

Dated at Rockville, Maryland, this 28th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11111 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–202–AD; Amendment 39–11151; AD 99–09–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series

airplanes, that currently requires a one-time inspection for heat damage of the fuselage skin and stubwing structure; either repetitive tests of certain seals or repair of heat damage, as necessary; and eventual replacement of corrujoint seals with new, improved seals. This amendment adds a requirement for repetitive inspections for heat damage of the subject area, and provides for a new optional terminating action for the repetitive inspections. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent leakage of hot air from the corrujoint seals of certain valves in the stubwings, and subsequent heat damage of the fuselage skin and stubwing structure, which could result in reduced structural integrity of the airplane.

DATES: Effective June 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 8, 1999.

The incorporation by reference of certain other publications as listed in the regulations, was approved previously by the Director of the **Federal Register** as of May 14, 1998 (63 FR 17318, April 9, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–01, amendment 39 –10450 (63 FR 17318, April 9, 1998), which is applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, was published in the **Federal Register** on November 10, 1998 (63 FR 62970). The action proposed to continue to require a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure; either repetitive leak tests of the seals of the bleed air system or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new, improved seals. Additionally, that action proposed to require repetitive inspections of the fuselage skin and stubwing connection angles to detect heat damage, and an additional detailed inspection of the fuselage and stubwing structure and repair when heat damage is detected. That action also proposed to provide for a new optional terminating action for the repetitive inspections.

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

Support for the Proposal

One commenter supports the proposal.

Request to Delay Requiring Repetitive Testing

One commenter, an airline operator, requests that data derived from the initial inspection mandated by AD 98–08–01, which has a May 1999 compliance time, be analyzed before a decision is made in regard to the need for additional testing.

The commenter states that it has no objection to accomplishing the repetitive inspections specified in the proposal, if they are required. However, the commenter contends that mandating those repetitive inspections at this time would be acting prematurely, since all data from the initial inspections are not available to analyze.

The FAA does not concur with the commenter's request to delay requiring repetitive inspections. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, advised the FAA that a sufficient number of operators have already accomplished the one-time inspection described in Fokker Service Bulletin SBF100–53–084, dated July 6, 1996 (the referenced source of service information in the proposal and AD 98–08–01). Consequently, the RLD included requirements for repetitive inspections in Revision 3 of the Dutch airworthiness directive BLA 1995–076/3 (A), dated November 28, 1997, to ensure continued airworthiness. That revision is referenced in this AD.

Therefore, the FAA has determined that the repetitive inspections required by this AD are necessary in order to adequately address the identified unsafe condition. However, as specified in paragraph (h) of this AD, operators have the option of modifying the airplane in accordance with Fokker Proforma Service Bulletin F100–36–027, dated March 21, 1997, which would provide terminating action for the repetitive inspection requirements of this AD.

Conclusion

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

Cost Impact

There are approximately 141 Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes of U.S. registry that will be affected by this AD.

The one-time visual inspection that is currently required by AD 98–08–01, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection requirement of this AD on U.S. operators is estimated to be $180 per airplane.

The seal replacement that is currently required by AD 98–08–01, and retained in this AD, takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $80 per airplane. Based on these figures, the cost impact of the seal replacement requirement of this AD on U.S. operators is estimated to be $500 per airplane.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $25,380, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10450 (63 FR 17318, April 9, 1998), and by adding a new airworthiness directive (AD), amendment 39–11151, to read as follows:

99–09–18 Fokker Services B.V.: Amendment 39–11151. Docket 98–NM–202–AD. Supersedes AD 98–08–01, Amendment 39–10450.

Applicability: Model F.28 Mark 0070 and Mark 0100 series airplanes equipped with any corrujoint seal having part number (P/N) BE20061 (Rolls-Royce P/N 3405891) or on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For 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 (i)(1) 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 leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, and subsequent heat damage of fuselage skin and stubwing structure adjacent to bleed air system components in the stubwings, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–08–01, Amendment 39–10450:

(a) For Model F28 Mark 0070 and Mark 0100 series airplanes as listed in Fokker Service Bulletin SFB100–53–084, dated July 6, 1996; if equipped with any corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891): Within 3,000 flight hours or 12 months after May 14, 1998 (the effective date of AD 98–08–01, amendment 39–10450), whichever occurs first, perform a one-time visual inspection of the fuselage skin in the left- and right-hand stubwings to detect heat damage; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SFB100–53–084, dated July 6, 1996.

(b) If no heat damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(2) Perform a leak test of each corrujoint seal at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(i) If any leakage is found at a seal, prior to further flight, replace that seal with a new, improved seal having part number EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(ii) If no leakage is found at a seal, perform an additional leak test of that seal within 250 flight hours after the initial test.

(A) If no leakage is found during the additional test of the seal, within 3,000 flight hours after the additional test, replace the seal with an improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(B) If any leakage is found during the additional test of the seal, prior to further flight, replace the seal with a new, improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; and inspect the fuselage skin in the applicable left- or right-hand stubwing to detect heat damage, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(c) If any heat damage is found during the inspection required by paragraph (a) or paragraph (b)(2)(ii)(B) of this AD, prior to further flight, perform a detailed inspection of the fuselage skin and stubwing structure to detect the extent of heat damage, in accordance with Parts 4 and 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Except as provided by paragraph (g) of this AD: Repair the affected structure in accordance with Part 6 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996. And

(2) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(d) As of May 14, 1998, no person shall install a corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891) on any airplane.

New Requirements for This AD

(e) For Model F.28 Mark 0070 and Mark 0100 series airplanes on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, has not been accomplished: Perform a visual inspection of the fuselage skin in the left-and right-hand stubwings to detect heat damage, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, at the latest of the times specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD, as applicable. Repeat the inspection required by paragraph (e) of this AD thereafter at intervals not to exceed 6,000 landings.

(1) Within 6,000 landings after the effective date of this AD.

(2) Within 6 months after the effective date of this AD.

(3) Within 6,000 landings after accomplishment of the inspection required by paragraph (a) of this AD.

(f) If any heat damage is detected during any inspection required by paragraph (e) of this AD, prior to further flight, perform a detailed visual inspection to determine the extent of heat damage, in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997. Except as provided by paragraph (g) of this AD, prior to further flight, repair in accordance with the service bulletin.

Note 2: Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, refers to

Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, as an additional source of service information for the detailed inspection procedures, repair limits, and repair procedures.

(g) If any damage is found during accomplishment of any action specified by paragraph (c)(1) or (f) of this AD, and Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, or Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the RLD (or its delegated agent).

(h) Installation of new heat shields, relocation of the aft bay overheat switch, and replacement of the insulation blankets of the bleed air ducts with new, improved insulation blankets, in accordance with Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, constitutes terminating action for the repetitive inspection requirements of paragraph (e) of this AD.

Alternative Method of Compliance

(i)(1) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–01, amendment 39–10450, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

(3) Airplanes repaired in accordance with alternative methods of compliance, approved previously in accordance with AD 98–08–01, amendment 39–10450, are not considered exempt from the repetitive inspection requirements of paragraph (e) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(k) Except for the actions specified in paragraphs (g) and (h) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; or Fokker Service Bulletin SBF100–53–087, dated November 17, 1997. The terminating action specified in paragraph (h) of this AD, if accomplished, shall be accomplished in accordance with Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997.

(1) The incorporation by reference of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997; and Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; was approved previously by the Director of the Federal Register as of May 14, 1998 (63 FR 17318, April 9, 1998).

(3) Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1995–076/3 (A), dated November 28, 1997.

(l) This amendment becomes effective on June 8, 1999.

Issued in Renton, Washington, on April 21, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10605 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–50–AD; Amendment 39–11152; AD 99–09–19]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes. This action requires revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in severe icing conditions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the airplane from stalling due to prolonged exposure to severe icing conditions, which could result in reduced performance and controllability of the airplane.

DATES: Effective May 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that during an in-flight incident an ATR airplane stalled in severe icing conditions and lost 4,000 feet of altitude before recovery.

Experience has shown that the currently recommended airspeeds in icing conditions provide adequate stall margins when flying in normal icing conditions, but provide little margin to stall speeds when the airplane has accreted a large amount of ice following prolonged flight in severe icing conditions. The current procedures in the FAA-approved Airplane Flight Manual (AFM) require immediate exit when severe icing conditions are detected. However, even if the exit maneuver is initiated immediately, a few minutes may elapse before the airplane is out of the severe icing conditions. Late detection of severe icing conditions and nonapplication or

late application of appropriate AFM procedures can contribute to prolonged exposure to severe icing conditions that may be outside the certification envelope (as required by Appendix C of part 25 of the Federal Aviation Regulations). Such prolonged exposure can cause the airplane to stall, resulting in reduced performance and controllability of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued AFM Temporary Revisions (TR) for the affected airplanes (Model ATR42–200, –300, and –320; Model ATR72–212A, Model ATR72–100, –200, and –210; and Model ATR42–500) to provide the flightcrew with modified limitations and procedures for operating in severe icing conditions. The TR for Chapter 2.06.01, dated February 1999, revises the AFM to aid in the early detection of severe icing by adding criteria related to unusual performance degradation. The TR for Chapter 4.05.05, dated February 1999, revises the AFM to increase the speed during the exit maneuver in order to provide improved margin to stall.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directives 1999–014–076(B) and 1999–015–040(B), both dated January 13, 1999, in order to ensure the continued airworthiness of these airplanes in France. (Errata to those French airworthiness directives were issued January 27, 1999, to correct typographical errors that referred to compliance times.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incident described previously. The FAA finds that the Limitations and Emergency Procedures sections of the FAA-approved AFM's for ATR42 and ATR72 series airplanes must be revised to prevent prolonged exposure to severe icing conditions that may be outside the certification envelope, which could result in reduced performance and controllability of the airplane. In light of this, the FAA considers that revision of the AFM's is necessary to ensure early detection of severe icing conditions and to provide improved margin to a stall.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent prolonged exposure to severe icing conditions that may be outside the certification envelope (as defined previously), which could result in reduced performance and controllability of the airplane. This AD requires revising the Limitations and Emergency Procedures sections of the AFM's to provide the flightcrew with modified procedures and limitations for operating in severe icing conditions.

Differences Between Rule and Foreign AD

Although the compliance time for the French airworthiness directives is 3 days, this rule requires accomplishment within 10 days. In determining an appropriate compliance interval for timely accomplishment of the AFM revisions for this AD, the FAA considered the safety implications and operators' maintenance schedules. In consideration of these factors, the FAA has determined that 10 days represents an appropriate interval in which the AFM revisions can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–50–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–09–19 Aerospatiale: Amendment 39–11152. Docket 99–NM–50–AD.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from stalling due to prolonged exposure to severe icing conditions, which could result in reduced performance and controllability of the airplane, accomplish the following:

(a) For Model ATR42–200, –300, and –320 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Chapter 2.06.01, page 2, of ATR 42 AFM Temporary Revision (TR), dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(b) For Model ATR42–500 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(c) For Model ATR72 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR 72 AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(d) For Model ATR72–212A series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR 72 A AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

Note 1: The AFM revisions required by paragraphs (a), (b), (c), and (d) of this AD may be accomplished by inserting a copy of the TR's into the applicable AFM. When these TR's have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the TR's.

Alternative Methods of Compliance

(e) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) The AFM revisions shall be done in accordance with the following, as applicable:

- ATR 42 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 42 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR 72 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 72 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR 72 A Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 72 A Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6

(**Note:** The AFM temporary revisions for Chapter 4.05.05 contain only pages 5 and 6 of the Emergency Procedures Section; no other page of that section has been revised. The AFM temporary revisions for Chapter 2.06.01 contain only page 2 of the Limitations Section; no other page of that section has been revised that pertains to this AD.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–014–076(B) and 1999–015–040(B), both dated January 13, 1999.

(h) This amendment becomes effective on May 19, 1999.

Issued in Renton, Washington, on April 22, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10644 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ANM–22]

RIN 2120–AA66

Establishment of Temporary Restricted Area, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Restricted Area 3203D (R–3203D) at Orchard, ID, for the period June 5–26, 1999. The temporary area will be established adjacent to the existing Restricted Area R–3203A. The Idaho Army National Guard will use this temporary restricted area to support its annual training requirements.

EFFECTIVE DATE: 901 UTC, June 5, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On February 26, 1999, the FAA proposed to establish a temporary restricted area, R–3203D, at Orchard, ID, from June 5–26, 1999, to provide essential ground maneuvering space needed to meet the Idaho Army National Guard annual training requirements (64 FR 9455). Interested

parties were invited to participate in this rulemaking proceeding by submitting written comments objecting to the proposal to the FAA. No comments were received objecting to the proposal. Except for editorial changes, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace Docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8F dated October 27, 1998.

The Rule

This amendment to 14 CFR part 73 of the Federal Aviation Regulations establishes a temporary Restricted Area R–3203D, at Orchard, ID, adjacent to the existing Restricted Area R–3203A. R–3203D will assist the Idaho Army National Guard in supporting its annual training requirements. The restricted area will be effective June 5–26, 1999. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different firing points, has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing will be directed into existing impact areas located approximately in the center of R–3203A. The temporary restricted area will provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing restricted area. The temporary restricted area will be utilized for Idaho Army National Guard Field Artillery firing and will be released to the FAA for public use during periods it is not required for military training.

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

Environmental Review

This action is categorically excluded under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

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

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′30″ W.; at lat. 43°17′51″ N., long. 116°16′25″ W.; at lat. 43°19′02″ N., long. 116°14′45″ W.; at lat. 43°19′02″ N., long. 116°06′36″ W.; at lat. 43°15′58″ N., long. 116°01′12″ W.; at lat. 43°15′00″ N., long. 116°01′00″ W.; at lat. 43°17′00″ N., long. 116°05′00″ W.; at lat. 43°17′00″ N., long. 116°12′00″ W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period June 5–26, 1999.

Controlling agency. FAA Boise ATCT.

Using agency. Commanding General Idaho Army National Guard.

Issued in Washington, DC, on April 27, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–11171 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH76

Claims and Effective Dates for the Award of Educational Assistance

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It establishes a standard for determining what constitutes a formal claim, an informal claim, and an abandoned claim that can be applied uniformly to the educational assistance programs VA administers. In addition, it establishes less restrictive effective dates for awards of educational assistance; establishes uniform time limits for acting to complete claims; and states VA's responsibilities when a claim is filed. This rule will result in a more uniform adjudication of claims for educational assistance under each of the education programs VA administers.

DATES: Effective Date: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 29, 1998 (63 FR 23408), VA proposed amendments to several regulations. VA proposed to amend the regulations to establish a standard for determining what constitutes a formal claim, an informal claim, and an abandoned claim that can be applied uniformly to the educational assistance programs VA administers. In addition, it was proposed to establish less restrictive effective dates for awards of educational assistance; to establish uniform time limits for acting to complete claims; and to state VA's responsibilities when a claim is filed. Comments were sought under the Paperwork Reduction Act concerning the collection of information in the proposed § 21.1030.

Interested persons were given 60 days to submit comments. No comments were received. Accordingly, based on

the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule. A few nonsubstantive changes have been made to the proposed rule for clarity.

The Department of Defense (DOD) is issuing this final rule jointly with VA insofar as it relates to VEAP and EATP. These programs are funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the MGIB–SR. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

Paperwork Reduction Act of 1995

Information collection requirements in this final rule (concerning 38 CFR 21.1030 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0596. The provisions of § 21.1030 restate a statutory requirement (38 U.S.C. 5101(a)) that provides that no benefits may be paid or furnished to an individual until VA receives from the individual a claim for the benefit sought in the form prescribed by the Secretary. The regulation adds language as to what information needs to be included in a claim.

OMB assigns a control number for each collection of information it approves. VA 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 valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of regulations.

The signers of this document hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 602 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will also affect the Montgomery GI Bill—Selected Reserve which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 6, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: April 27, 1999.

P.A. Tracey,

Vice Admiral, USN, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: March 22, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21 (subparts B, C, D, G, H, K, and L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

1. The authority citation for part 21, subpart B continues to read as follows:

Authority: 38 U.S.C. 501(a), 38 U.S.C. chapter 51, unless otherwise noted.

2. Section 21.1029 is added, to read as follows:

§ 21.1029 Definitions.

These definitions apply to this subpart, and to subparts C, D, G, H, K, and L of this part.

(a) *Abandoned claim.* A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and—

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

(Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The *date of claim* is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by § 21.1032, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 5103)

(c) *Formal claim.* A claim is a *formal claim* when the claimant (or his or her authorized representative) files the claim with VA, and—

(1) The claim is a claim for—

(i) Educational assistance;

(ii) An increase in educational assistance; or

(iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(d) *Informal claim.* (1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term *informal claim* means—

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (c)(1)(i) of this section that is filed in a document other than in the prescribed form.

(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term *informal claim* means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved school is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a), 5102, 5901)

(e) *VA.* The term *VA* means the United States Department of Veterans Affairs.

(Authority: 38 U.S.C. 301)

3. Section 21.1030 is revised; and a parenthetical is added at the end of the section to read as follows:

§ 21.1030 Claims.

An individual must file a formal claim for educational assistance for pursuit of a program of education, indicating the proposed place of training, the school or training establishment, the objective of the program of education, and such other information as the Secretary may require. A servicemember also must consult with his or her service education officer before filing a formal claim for educational assistance.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0596.)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a))

4. Section 21.1031 is revised to read as follows.

§ 21.1031 VA responsibilities when a claim is filed.

(a) *VA will furnish forms.* VA will furnish all necessary claim forms, instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim.

(Authority: 38 U.S.C. 5102)

(b) *Request for additional evidence.* If a formal claim for educational assistance is incomplete, or if VA requires additional evidence or information to adjudicate the claim, VA will notify the claimant of the evidence and/or information necessary to complete or adjudicate the claim and of the time limit provisions of § 21.1032(a).

(Authority: 38 U.S.C. 5103)

5. Section 21.1032 is revised to read as follows:

§ 21.1032 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions.

(Authority: 38 U.S.C. 5101, 5113)

(b) *Notice of time limit for filing evidence.* If a claimant's claim is incomplete, VA will notify the claimant of the evidence necessary to complete the claim. Unless payment of educational assistance is permitted by paragraph (e) of this section, if the evidence is not received within one year from the date of such notification, VA will not pay educational assistance by reason of that claim.

(Authority: 38 U.S.C. 5103)

(c) *Time limit for filing a claim for an extended period of eligibility under 38 U.S.C. chapter 30, 32, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, or § 21.7051 by the later of the following dates.

(1) One year from the date on which the spouse's, surviving spouse's, or veteran's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, or veteran's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 38 U.S.C. 3031(d), 3232(a), 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).*

VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in § 21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist.

(Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.* (1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met:

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

(Authority: 38 U.S.C. 501(a))

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

6. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

7. In § 21.3021, paragraph (m) is amended by removing ''§ 21.4200'', and adding, in its place, ''§§ 21.1029 and 21.4200''.

8. Section 21.3030 is revised to read as follows:

§ 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

§§ 21.3031 and 21.3032 [Removed]

9. Sections 21.3031 and 21.3032 are removed.

Subpart D—Administration of Educational Assistance Programs

10. The authority citation for subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606, 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

11. In § 21.4131, the introductory text; and paragraphs (a) and (d) are revised, to read as follows:

§ 21.4131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 32.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3672, 5103, 5110(b), 5113)

* * * * *

(d) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 35.* When a person eligible to receive educational assistance under 38 U.S.C. chapter 35 enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the eligible person is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The beginning date of eligibility as determined by § 21.3041(a) or (b) or by § 21.3046(a) or (b), whichever is applicable;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The date the educational institution certifies under paragraph (b) or (c) of this section;

(iv) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for that program, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

12. The authority citation for subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

13. In § 21.5030, the heading for the section and paragraph (c) introductory text, are revised; paragraphs (c)(1), (c)(2), and (c)(3) are redesignated as paragraphs (c)(2), (c)(3), and (c)(4), respectively; a new paragraph (c)(1) is added; and a newly redesignated paragraph (c)(3) is revised, to read as follows:

§ 21.5030 Applications, claims, and time limits.

* * * * *

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

* * * * *

(3) Section 21.1031—VA responsibilities when a claim is filed.

* * * * *

§ 21.5130 [Amended]

14. In § 21.5130, paragraph (a) is amended by removing ''dates'', and adding, in its place, ''dates (except paragraph (d))''.

Subpart H—Educational Assistance Test Program

15. The authority citation for subpart H continues to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

16. Section 21.5730 is revised to read as follows:

§ 21.5730 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in § 21.5701, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 2141, 2149; 38 U.S.C. 5101, 5102, 5103)

§ 21.5732 [Removed]

17. Section 21.5732 is removed.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

18. The authority citation for Subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

19. In § 21.7020, the introductory text is revised to read as follows:

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply. (*See* also additional definitions in § 21.1029).

* * * * *

20. Section 21.7030 is revised to read as follows:

§ 21.7030 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

21. In § 21.7032, paragraphs (b), (c), (d), and (e) are removed; paragraph (f) is redesignated as paragraph (b); and the section heading and paragraph (a) are revised to read as follows:

§ 21.7032 Time limits for making elections.

(a) *Scope of this section.* The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1032.

(Authority: 38 U.S.C. 3018B)

* * * * *

§ 21.7051 [Amended]

22. In § 21.7051, paragraph (a)(1) is amended by removing ''§ 21.7032(e) of this part'' and adding, in its place, ''§ 21.1032(c)''.

23. In § 21.7131, paragraph (d) is removed and reserved; paragraph (e)(1)(iii) is amended by removing ''subdivision (ii)(B) of this subparagraph'' and adding, in its place, ''paragraph (e)(1)(ii)(B) of this section''; paragraph (e)(2)(i) introductory text is removed; paragraphs (e)(2)(i)(A), (e)(2)(i)(B), and (e)(2)(i)(C) are redesignated as new (e)(2)(i), (e)(2)(ii), and (e)(2)(iii), respectively; the introductory text and paragraph (a) are revised to read as follows:

§ 21.7131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103, 5110(b), 5113)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

24. The authority citation for subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

25. In § 21.7520, the introductory text is revised to read as follows:

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

* * * * *

26. Section 21.7530 is revised to read as follows:

§ 21.7530 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3472)

§ 21.7532 [Removed]

27. Section 21.7532 is removed.

28. In § 21.7631, paragraph (d) is removed; paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g), respectively; and the introductory text and paragraph (a) are revised to read as follows:

§ 21.7631 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible reservist enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the reservist is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the reservist is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3672, 5103)

* * * * *

[FR Doc. 99–11069 Filed 5–3–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038–100a; FRL–6334–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from paper, fabric, and film coating operations; graphic arts; coatings and ink manufacturing; plastic, rubber and glass coatings; motor vehicle and mobile equipment non-assembly line coating operations; and solvent cleaning operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on July 6, 1999 without further notice, unless EPA receives adverse comments by June 3, 1999. If EPA received such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. The rules being approved into the California State SIP include: SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996 (1128, 1130), September 14, 1992 (1141.1), August 1, 1997 (1145), and March 10, 1998 (1151, 1171).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portions of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1996, September 14, 1992, August 1, 1997, and March 10, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations. SCAQMD amended Rules 1128 and 1130 on March 8, 1996, Rule 1141.1 on March 6, 1992, Rule 1145 on February 14, 1997 and Rules 1151 and 1171 on June 13, 1997. These submitted rules were found to be complete on October 30, 1996 (1128, 1130), November 20, 1992 (1141.1), September 30, 1997 (1145), and May 21, 1998 (1151, 1171) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

These Rules control emissions of VOCs from the following source categories: 1128—operations that apply coatings to paper, fabric or film

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

substrates, 1130—graphic arts operations, 1141.1—coatings and ink manufacturing establishments, 1145—plastic, rubber, and glass coating operations, 1151—automotive refinishing operations, and 1171—solvent cleaning operations during production, repair, maintenance or servicing of parts, products, tools, machinery, equipment, or general work areas. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to rule 1128 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabric, Automobiles, and Light-Duty Trucks, EPA–450/2–77–008, May 1977, and the CTG applicable to Rule 1130 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts, Rotogravure and Flexography, EPA–450/2–78–033, December 1978, Rules 1141.1, 1145, 1151 and 1171 control emissions from source categories for which EPA has not published a CTG. Accordingly, these rules were evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D. Rule 1151 was also evaluated against subpart E of 40 CFR part 59, National Volatile Organic Compound Emission Standard for Automobile Refinish Coatings. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On December 20, 1993, EPA approved into the SIP a version of Rule 1128—Paper, Fabric, and Film Coating Operations that had been adopted by SCAQMD on February 7, 1992. SCAQMD submitted Rule 1128—Paper, Fabric, and Film Coating Operations includes the following significant changes from the current SIP:

- Added definition of aerosol coating product;
- Deleted listing the exempt compounds and added wording to refer to Rule 102—Definition of Terms;
- Changed the wording of the aerosol coatings exemption to increase clarity of the rule.

On October 31, 1995, EPA approved into the SIP a version of Rule 1130—Graphic Arts that had been adopted by SCAQMD on September 8, 1995. SCAQMD submitted Rule 1130—Graphic Arts includes the following significant changes from the current SIP:

- Added definition of aerosol coating product;
- Added an exemption for aerosol coating products.

On January 24, 1985, EPA approved into the SIP a version of Rule 1141.1—Coating and Ink Manufacturing that had been adopted by SCAQMD on November 4, 1983. SCAQMD submitted Rule 1141.1—Coatings and Ink Manufacturing includes the following significant changes from the current SIP:

- Changed rule format to agree with format of current SCAQMD rules;
- Added an exempt compound listing;
- Added definition of VOC;
- Updated record keeping requirements, and extended record retention time from one to two years.

On December 20, 1993, EPA approved into the SIP a version of Rule 1145 that had been adopted by SCAQMD on January 10, 1992. SCAQMD Rule 1145—Coating and Ink Manufacturing includes the following significant changes from the current SIP:

- A lower VOC limit for electric dissipating and shock free coatings;
- Removed language used to regulate solvent cleaning activities, and added reference to Rule 1171—Solvent Cleaning Operations.
- Changed the default transfer efficiency provision to a value of not less than 65% in place of the high-volume, low-pressure (HVLP) spray equipment standard;
- Exempted air-brush operations from transfer efficiency requirements;
- Updated compliance test methods, to reflect the most recent test methods.

On June 13, 1996, EPA approved into the SIP a version of Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations that had been adopted by SCAQMD on September 9, 1994. SCAQMD submitted Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations includes the following significant changes from the current SIP:

- Updated definition of aerosol coatings;
- Deleted listing of exempt compounds and added reference to Rule 102—Definition of Terms;
- Added an exemption for aerosol coatings to be consistent with amendments to State of California Health and Safety Code Section 41712.

On July 14, 1995, EPA approved into the SIP a version of Rule 1171—Solvent Cleaning Operations that had been adopted by SCAQMD on May 12, 1995. SCAQMD submitted Rule 1171—Solvent Cleaning Operations includes the following significant changes from the current SIP:

- Deleted listing of exempt compounds, and added reference to Rule 102—Definition of Terms;
- Added VOC limits for solvents to clean electrical apparatus.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicles and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 6, 1999 without further notice unless the Agency receives relevant adverse comments by June 3, 1999.

If the EPA received such comments, then EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 6, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

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

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

C. Executive Order 13045

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

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

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 21, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(189)(i)(A)(*7*), (c)(239)(i)(B), (c)(248)(i)(B)(*3*) and (c)(254)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(189) * * *

(i) * * *

(A) * * *

(*7*) Rule 1141.1, adopted on November 4, 1983 and amended on March 6, 1992.

* * * * *

(239) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1128, adopted on May 4, 1979 and amended on March 8, 1996, and Rule 1130, adopted on October 3, 1980 and amended on March 8, 1996.

* * * * *

(248) * * *

(i) * * *

(B) * * *

(*3*) Rule 1145, adopted on July 8, 1983 and amended on February 14, 1997.

* * * * *

(254) * * *

(i) * * *

(D) * * *

(*2*) Rule 1151, adopted on July 8, 1988 and amended on June 13, 1997, and Rule 1171, adopted on August 2, 1991 and amended on June 13, 1997.

* * * * *

[FR Doc. 99–11039 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ002; FRL–6333–8]

Approval of State Operating Permit, Rule Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final approval.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on revisions to the New Jersey operating permit rule (N.J.A.C. 7:27–22.4 and 22.5) as submitted by the State of New Jersey to fulfill the requirements of Title V of the Clean Air Act. The revisions extend the deadlines for the last two waves of permit applications until February 4, 1999 and May 4, 1999, if these applications are submitted in electronic format.

DATES: This rule is effective on July 6, 1999 without further notice, unless EPA receives adverse comment by June 3, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Air Quality Permitting Program, Bureau of Operating Permits, 401 E. State Street, Trenton, New Jersey 08625–0027.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4019.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to title V of the Clean Air Act (''the Act'') and its implementing regulations codified at 40 CFR part 70, EPA granted source category-limited interim approval to the New Jersey operating permit program. *See,* 61 FR 24715 (May 16, 1996). New Jersey's category-limited interim program became effective on June 17, 1996 and was scheduled to expire on June 17, 1998, two years after the approval. However, EPA has recently granted extensions to all interim programs, including that of NJ's, to June 1, 2000.

The Act states that:

''any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted.'' *See,* 40 CFR section 70.5.

New Jersey's operating permit rule contains application submittal deadlines established for different source categories. Under the rule, applications are submitted to the New Jersey Department of Environmental Protection (''NJDEP'') at different times in seven waves as determined by the

source's Standard Industrial Classification (SIC) Code. The first five waves of sources are subject to the interim program and the last two waves will be subject to the full program. Consistent with the Act and 40 CFR part 70, all sources subject to the interim program must submit their applications by June 17, 1997 (12 months after the program's effective date) and those subject to the full program must submit by June 17, 1999 (12 months after the anticipated full program approval date). Despite two extensions granted to New Jersey for the interim program, extending the effectiveness of the interim program to June 1, 2000, the application submittal deadline for the remaining two waves of applications has not changed. *See,* 63 FR 40053 (July 27, 1998). It remains June 17, 1999. It should be noted that New Jersey's original application submittal schedule had required all applications to be submitted by May 18, 1998, 13 months before the deadline prescribed by the Act.

State Submittal

To encourage electronic submittal of permit applications, the State of New Jersey amended its operating permit rule (N.J.A.C. 7:27–22) to extend the application submittal due dates for sources required to submit their applications during the last two waves of submittals from November 15, 1997 to February 4, 1999 and from May 15, 1998 to May 4, 1999, respectively if the applications were submitted in electronic format. Amendments to N.J.A.C. 7:27–22.4 and 22.5 were proposed on June 2, 1997 and January 20, 1998 and subsequently adopted on October 20, 1997 and May 4, 1998, respectively. On June 11, 1998, New Jersey submitted a copy of the adopted rules and requested that EPA update New Jersey's operating permit program to reflect the newly adopted amendments. The New Jersey submittal included such information as responses to comments and copies of the adoption notices showing that the rule adoptions were procedurally correct as required by 40 CFR § 70.4(b)(2).

Review of State Submittal

The extension sought by the NJDEP affects only the last two waves of applications. According to New Jersey's operating permit rule, the original application submittal (paper or electronic) due dates for the last two waves were November 15, 1997 and May 15, 1998, respectively. These deadlines still hold for paper submission. However, for those sources submitting electronically, the amendment allows additional time. The last two waves may submit electronic applications by February 4, 1999 and May 4, 1999, respectively. Based on New Jersey's interim program effective date of June 17, 1996, all applications subjected to the interim program and full program must be submitted by June 17, 1999. Since the amended electronic application submittal deadlines still fall within the June 17, 1999 due date as required under section 503(c) of the Act and part 70.5(a), EPA finds New Jersey's rule/program revision approvable.

Conclusion

EPA has evaluated New Jersey's amended operating permit rule and the request to incorporate the changes into the approved interim program. EPA has concluded that the amended operating permit rule as submitted by New Jersey bears no adverse effect on the implementation or enforcement of the source category-limited interim program which was originally approved. The New Jersey operating permit program, with the current amendment, continues to be in compliance with the requirements of the Act and the part 70 regulations as codified at 40 CFR part 70; therefore, EPA is approving the amended New Jersey Operating Permit Rule. Under this approval, New Jersey may extend the permit application submittal due dates for the sixth and seventh waves until February 4, 1999 and May 4, 1999, respectively.

The granting of final approval to the amended operating permit rule for the State of New Jersey only changes the application submittal due dates for certain affected sources. All other aspects of the New Jersey Operating Permit Program remain fully operational and enforceable. Any source that fails to comply with the amended application submittal schedule or any provisions of the approved program may be subject to N.J.A.C. 7:27–22.3(ll) as well as section 502(a) of the Act. The federal oversight and sanctions provisions of the final interim approval as promulgated on May 16, 1996 for the State of New Jersey remain in full force irrespective of the granting of final approval to the amended operating permit rule.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the State rule revision if adverse comments are filed. This rule will be effective on July 6, 1999 without further notice unless the Agency receives adverse comments by June 3, 1999. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Executive Order 12866

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

Executive Order 12875

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

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

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final approval is not subject to E.O. 13045 because it approves a state program implementing a Federal regulation, and it is not economically significant under E.O. 12866.

Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

Regulatory Flexibility Act

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

This final approval will not have a significant impact on a substantial number of small entities because it does not create any new requirements but simply allows additional time for the submittal of electronic applications from major stationary sources. I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act

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

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

Submission to Congress and the General Accounting Office

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

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: April 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

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

2. Appendix A to Part 70 is amended by adding new paragraph (b) to the entry for New Jersey State in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

New Jersey

* * * * *

(b) The New Jersey State Department of Environmental Protection submitted an operating permits program revision request on June 11, 1998; interim program revision approval effective on July 6, 1999.

* * * * *

[FR Doc. 99–10853 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6333–2]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision for Corrective Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Missouri has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). This revision package covers authorization for corrective action. The EPA has reviewed Missouri's application and determined that its hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, the EPA's decision to authorize Missouri's hazardous waste program revision will take effect. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the revision for corrective action should relevant adverse comments be filed.

DATES: Final authorization for Missouri will become effective without further notice on July 6, 1999, if the EPA receives no adverse comment by June 3, 1999. Should the EPA receive such comments, the EPA will withdraw this rule before its effective date by publishing a timely withdrawal in the **Federal Register**.

ADDRESSES: Written comments should be sent to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of Missouri's program revision application are available for inspection and copying during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176 (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551–7039.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. 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 the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. Missouri

On November 20, 1985, the EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the state of Missouri which became effective December 12, 1985 (50 FR 47740). Missouri received authorization for revisions to its program as follows: February 27, 1989, effective April 28, 1989 (54 FR 8190); January 11, 1993, effective March 12, 1993 (58 FR 3497) and on May 30, 1997, effective July 29, 1997 (62 FR 29301). Additionally, the state adopted and applied for interim authorization for the corrective action portion of the HSWA Codification Rule (July 15, 1985, 50 FR 28702). For a full discussion of the HSWA Codification Rule, the reader is referred to the **Federal Register** cited above. The state was granted interim authorization for the corrective action on February 23, 1994, effective April 25, 1994 (50 FR 8544). Missouri has now applied for final authorization for the corrective action portion of the HSWA Codification Rule, for which it previously received interim authorization.

The EPA has reviewed Missouri's application for final authorization for corrective action, and has made an immediate final decision that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify. Consequently, the EPA intends to grant final authorization for corrective action to Missouri. The public may submit written comments on the EPA's immediate final decision up until June 3, 1999. Copies of Missouri's application for the program revision are available for inspection and copying at the locations identified in the **ADDRESSES** section of this action.

Approval of Missouri's program revision shall become effective on July 6, 1999 unless an adverse comment pertaining to the state's revision discussed in this document is received by the end of the comment period. If an adverse comment is received the EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The state will assume lead responsibility for issuing permits for those program areas authorized today. For those permits which will now change to state lead from the EPA, the EPA will transfer copies of any pertinent file information to the state. The EPA will suspend issuance of new permits under the provisions for which the state is being authorized on the effective date of this authorization. The EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. When the state reissues federally issued permits as state permits, the EPA will rely on the state to enforce them.

C. Decision

I conclude that Missouri's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted final authorization to operate its hazardous waste programs as revised. Missouri now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Missouri also has primary enforcement responsibilities, although the EPA retains the right to conduct inspections under Section 3007 of RCRA and take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Administrative Requirements

1. Executive Order (E.O.) 12866

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

2. Executive Order 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct

compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 required the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

3. Executive Order 13045

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

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

4. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

5. Certification Under the Regulatory Flexibility Act

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

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

6. Unfunded Mandates

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

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

7. 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.

8. 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 the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through

OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

9. 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).

List of Subjects in 40 CFR Part 271

Environmental protection, administrative practice and procedure, confidential business information, hazardous materials transportation, hazardous waste, Indian lands, intergovernmental regulation, penalties, reporting and record keeping requirements, water pollution control, water supply.

Authority: This document 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: April 13, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–11037 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 530

[Docket No. 98–30]

Service Contracts Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Confirmation of interim final rule with changes.

SUMMARY: This rule confirms as final the Federal Maritime Commission's interim rule governing service contracts between shippers and ocean common carriers to implement changes made to the Shipping Act of 1984 (''Act'') by the Ocean Shipping Reform Act of 1998 (''OSRA''). The interim final rule implemented section 8(c) of the Act. The interim final rule is adopted as a final rule with certain changes. The final rule: revises the Commission's definition of ''motor vehicle'' in accordance with its regulation governing Carrier Automated Tariff Systems (Docket No.98–29); adds a limited exception to the filing requirements in cases of the Commission's electronic filing systems' malfunction; revises the requirements for registration for filing and cross-referencing for clarity; revises the regulation on ET publication to clarify where those for multiple carrier parties must appear; and carries forward certain exemptions from the requirements of the regulation which the Commission had granted in former part 514 of this chapter, but which had been inadvertently omitted from the interim final rule. The final rule also corrects a paragraph numbering error made in the section dealing with publication.

DATES: Effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On December 17, 1998, the Federal Maritime Commission (''Commission'' or ''FMC'') issued a notice of proposed rulemaking (''NPR'') to implement changes to the Shipping Act of 1984 (''Act'') mandated by the Ocean Shipping Reform Act of 1998 (''OSRA''), Pub. L. 105–258, 112 Stat. 1902, enacted on October 14, 1998. 63 FR 71062–71076 (December 23, 1998). On March 1, 1999, the Commission issued an interim final rule (''IFR''), removing 46 CFR part 514 and adding 46 CFR part 530, which made significant changes to the proposed rule. 64 FR 11186–11215 (March 8, 1999). The Commission held the interim final rule open for comment until April 1, 1999.

The Commission received comments on the IFR from: Wallenius Lines (''Wallenius''); Effective Tariff Management (''ETM''); Department of the Army, Military Traffic Management Command (''MTMC''); the United States Postal Service (''USPS''); the Council of European and Japanese National Shipowners' Associations (''CENSA''); the American Association of Exporters and Importers (''AAEI''); P&O Nedlloyd (''P&O''); the International Longshore and Warehouse Union, AFL–CIO (''ILWU''); the Ocean Carrier Working Group Agreement (''OCWG''); the National Industrial Transportation League (''NITL''); Sea-Land Service, Inc. (individually, concurring in the U.S. Industry Interests comments) (''Sea-Land''); E.I. du Pont de Nemours and Company (''DuPont''); and joint comments from American President Lines, Ltd., Sea-Land Service, Inc., Crowley Maritime Corporation, Farrell Lines Inc., Lykes Lines, Ltd., LLC, the Transportation Institute, the American Maritime Congress, and the Maritime Institute for Research and Industrial Development (''U.S. Industry Interests'').

A. General Comments

The comments generally agree with the Commission's re-assessment of the filing systems and the more innovative approach of the IFR.

B. Section 530.3(m)—Definitions—Motor Vehicle

The Commission received comments from Wallenius on the IFR's definition of ''motor vehicle.'' We adopt the same analysis as set forth in Docket No. 98–29, *Carrier Automated Tariff Systems* (46 CFR part 520) and, accordingly, revise the definition of ''motor vehicle.''

C. Section 530.4—Confidentiality

Section 530.4 of the IFR maintains that all service contracts filed with the Commission will be confidential; however, such confidentiality from the public does not preclude the Commission from providing service contract information to another agency of the Federal government. In order to address certain commenters' concerns about public disclosure of service contract information that could result from sharing such information with other Federal agencies, the Commission will require an agency requesting the information to enter a Memorandum of Understanding (''MOU'') with the Commission, stating that such information is necessary to its statutory functions and agreeing to protect the confidentiality of the information it receives.

MTMC and the U.S. Industry Interests are the only parties that filed comments on this section. MTMC states that it is the Army component of the United States Transportation Command. It is responsible for providing ocean and intermodal transportation services and

related support services to Department of Defense (''DOD'') components during peace, war and national emergencies. MTMC explains that it solicits ocean and intermodal transportation in the U.S. and abroad. It procures transportation services by soliciting rates for fixed periods from operators of U.S.-flag vessels for DOD cargo movements between the continental U.S. and worldwide points, as well as between foreign points. Such DOD cargo is transported, MTMC states, in commercial carriers' regularly scheduled commercial routes, in the same vessels and on the same schedule as any other commercial cargo. MTMC further points out that its worldwide solicitations may result in the acceptance of more than one carrier's offer in order to fulfill DOD transportation requirements.

MTMC agrees with the Commission's assessment that the legislative history of OSRA indicates that confidentiality accorded to service contract filings may not be used to prevent other Federal agencies (particularly DOD) from performing their statutory duties. The Cargo Preference Act of 1904, 10 U.S.C. 2631, and the Competition in Contracting Act, 10 U.S.C. 2302, *et seq.*, MTMC argues, are two statutes whose requirements MTMC can fulfill only by having access to service contract information. The Cargo Preference Act, asserts MTMC, requires DOD to use U.S.-flag vessels for the transportation of Armed Forces' supplies unless ''the freight charged by those vessels is excessive or otherwise unreasonable,'' and prohibits the operators of those vessels from charging rates that are ''higher than the charges made for transporting like goods for private persons.'' MTMC at 5 (quoting 10 U.S.C. 2631(a)). Further, MTMC explains that the law requires that the government purchase supplies and services at ''fair and reasonable'' prices. *Id*. (citing 10 U.S.C. 2304, 2305).

MTMC asserts that it ''relies upon access to tariff and service contract information to fulfil its statutory responsibilities with regard to the Cargo Preference Act of 1904 and other related government acquisition laws,'' and, thus, it is ''vital that government agencies procuring ocean transportation services * * * have access to service contract information concerning commodities, volumes, routing, service commitments and rates.'' *Id*. MTMC argues that examination of publicly available tariff rates is less relevant than the examination of service contract rates in determining fair and reasonable rate levels in a trade lane, because the vast majority of international cargo moves under service contracts. MTMC also notes that the legislative history of OSRA includes several assurances that government agencies would have access to service contract information. MTMC at 6 (citing 144 Cong. Rec. S3320, and 144 Cong Rec. at S11302).

Finally, MTMC asserts its intention to formally request an MOU under which the Commission would release confidential service contract information which MTMC will hold in confidence and will use only for the purposes of enforcing the Cargo Preference Act and for fulfilling the requirements of the Competition in Contracting Act.

The U.S. Industry Interests initially incorporate into their comments by reference the arguments set forth in their comments filed on January 22, 1999, in response to the NPR. The U.S. Industry Interests then argue that making service contracts available to MTMC and other Federal agencies will ensure that such information is made available to government procurement officials responsible for the contracts with carriers. Such disclosure, the U.S. Industry Interests assert, would be inconsistent with the policies underlying OSRA, namely, that carriers ''need the flexibility to keep service contract terms confidential from a shipper who might use such information to seek better terms for itself.'' U.S. Industry Interests at 3.

Assuming, however, that the legislative history does justify disclosure of confidential service contract information to other government officials in order to monitor compliance with the Cargo Preference Act, the U.S. Industry Interests claim that the monitoring function should be performed only by those officials who are independent of the procurement activity.

If the Commission decides to defer the resolution of the aforementioned issues, the U.S. Industry Interests urge the Commission to add the following sentence to § 530.4: ''Before doing so, the Commission will enter into a Memorandum of Understanding (MOU) with such agency setting forth the terms and conditions for use of such information or contracts, and before executing any such MOU will publish it in proposed form for public comment.'' U.S. Industry Interests at 3–4. The U.S. Industry Interests argue that ''[s]uch notice and comment is both appropriate and required given the potential substantive impacts of interagency disclosure of confidential service contract information, and also given the prohibitions of the Trade Secrets Act, 18 U.S.C. 1905.'' U.S. Industry Interests at 4 & n.4 (citing *Reynolds Metals Co.* v. *Rumsfeld*, 564 F.2d 663, 669 (4th Cir. 1977), and *Chem Serv., Inc.* v. *Environmental Monitoring Systems of EPA*, 12 F.3d 1256, 1267 (3d Cir. 1993)).

The U.S. Industry Interests argue in a footnote that, under the Trade Secrets Act, confidential information such as service contracts can only be disclosed if they are ''authorized by law.'' U.S. Industry Interests at 4 n.5. At a minimum, the U.S. Industry Interests assert, OSRA only allows the Commission to disclose service contract information to other Federal agencies for the purposes of the Cargo Preference Act.[1] However, the U.S. Industry Interests aver that assuming, *arguendo*, that other disclosures would be ''authorized by law,'' any MOU must be adopted in accordance with Administrative Procedure Act (''APA''), 5 U.S.C. 501, *et seq.*, notice and comment procedures. Id. (citing *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979) (finding that when a Federal agency is relying on a *federal regulation* as authorization to disclose confidential information to another Federal agency under the exception to the Trade Secrets Act that such disclosure be ''authorized by law,'' such authorization must be based on a substantive agency regulation that has the force and effect of law).[2]

The Federal Reports Act, 44 U.S.C. 3501, *et seq.* (which is part of the Paperwork Reduction Act), governs the disclosure to other Federal agencies of information obtained from the public by agency collection, while the Trade Secrets Act, 18 U.S.C. 1905, governs the disclosure by Federal employees of confidential information generally.

One of the main purposes of the Federal Reports Act is to minimize the paperwork burden on the public by maximizing ''the utility of information created, collected, maintained, used,

[1] However, the U.S. Industry Interests refer to their January 22, 1999 comments to reiterate that they believe the Commission does not have the authority to do this.

[2] The U.S. Industry Interests cite this case in support of their position that the MOU be adopted in accordance with notice and comment procedures; however, this case is inapposite because it speaks to what type of law is sufficient to satisfy the ''authorized by law'' exception to the Trade Secrets Act. The Court found that the law must be substantive, and therefore a procedural rulemaking promulgated by an agency that was not noticed for public comment would be insufficient. In the instant proceeding, as discussed *infra*, the Commission is relying on OSRA, the Cargo Preference Act, and the Competition in Contracting Act as its authorization for disclosing service contract information to other Federal agencies. Moreover, the case does not state that the MOU itself is innately substantive and must be noticed for public comment, as the U.S. Industry Interests suggest.

shared and disseminated by or for the Federal Government.'' 44 U.S.C. 3501(1), (2). In order to accomplish this purpose, the Federal Reports Act encourages the sharing of information between Federal agencies by providing that ''an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.'' 44 U.S.C. 3510(a). The House Report reiterates this intention: ''The Act promotes sharing and disclosure of information for purposes of maximizing the utility of information to users, both governmental and non-governmental. Sharing of information among Government agencies also serves the goal of minimizing the burden imposed on the public by Government collection of information.'' H.R. Rep. No. 104–37, 104th Cong., 1st Sess. 31 (1995), reprinted in 1995 U.S.C.C.A.N. 164, 194.[3]

The only limitation Congress placed on inter-agency disclosure of information is when such disclosure is ''inconsistent with applicable law.'' 44 U.S.C. 3510(a). Section 3510 was unchanged by the 1980 and 1986 amendments, ''except for word changes for purposes of consistency and clarity,'' (H.R. Rep. No. 104–37 at 53, 1995 U.S.C.C.A.N. at 216); thus, the Commission can rely on the legislative history from the previous amendments in order to determine what Congress intended by ''inconsistent with applicable law.'' The Senate Report states that

> for the sharing of data to be inconsistent with applicable law, the applicable law must prohibit the sharing of data between agencies or must totally prohibit the disclosure to any one outside the agency. A mere prohibition on disclosure to the public would not be inconsistent with sharing the data with another agency unless the sharing would inexorably lead to a violation of that prohibition.

S. Rep. No. 96–930, 96th Cong., 2d Sess. 50 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6241, 6290.

Section 8(c)(1) of OSRA states that ''service contracts shall be filed confidentially with the Commission.'' As was delineated in the NPR (63 FR at 71064–71065) and the IFR (64 FR at 11188), the Commission has found that Congress intended that such service contract information would be held confidential by the Commission from the public, not other Federal agencies.[4] The legislative history indicates that the drafters intended that the confidentiality provision not hamper other Federal agencies which have legitimate needs to access service contract information in order to carry out their statutory duties. The Commission is required to protect information filed confidentially from disclosure to the public, but it is not precluded from disclosing such information to other Federal agencies where clearly warranted and justified. Moreover, Congress did not attempt, through OSRA, to remove other Federal agencies' access to pricing information necessary for the administration of the Cargo Preference Act and the Competition in Contracting Act. All three statutes must be read together to give each validity. Therefore, the Commission declines to read OSRA as repudiating the responsibilities assigned other agencies by those statutes.

As OSRA intended service contract information to be kept confidential from the public and not from other Federal agencies, the disclosure of such information to other Federal agencies is not ''inconsistent with applicable law.'' Furthermore, sharing such information with another Federal agency would not ''inexorably lead to a violation'' of the prohibition against disclosure to the public, because, as the Commission stated in the IFR, such information would only be disclosed to an agency which enters an MOU with the Commission assuring that such information is necessary to the fulfillment of its statutory functions and that it will protect the confidentiality of such information. 64 FR at 11188. Therefore, disclosure of service contract information to other Federal agencies will not jeopardize the statutory aim of non-disclosure of confidential service contract information to non-governmental entities.

The U.S. Industry Interests argue that disclosing confidential service contract information to other Federal agencies would violate the Trade Secrets Act. It is unclear, however, whether the Trade Secrets Act is applicable to the disclosure of confidential service contract information between Federal agencies. Two cases have addressed whether inter-agency disclosures of confidential information are governed by the Federal Reports Act or the Trade Secrets Act: *Shell Oil Co.* v. *Department of Energy*, 477 F. Supp. 413 (D. Del. 1979), *aff'd*, 631 F.2d 231 (3d Cir. 1980), cert. denied, 450 U.S. 1024 (1981), and *Emerson Electric Co.* v. *Schlesinger*, 609 F.2d 898 (8th Cir. 1979). In *Shell Oil*, the District Court of Delaware, affirmed by the Third Circuit, held that the Trade Secrets Act applies to inter-agency disclosures, 477 F.2d at 432, while the Eighth Circuit found in *Emerson Electric* that because the Federal Reports Act controls the exchange of information between Federal agencies, the Trade Secrets Act applies only to the *public* disclosure of trade secret material, 609 F.2d at 907. The Supreme Court has yet to specifically address this conflict among the circuits. Thus, while it is debatable whether the Trade Secrets Act applies, we will assume it does for the purposes of this discussion.

The Trade Secrets Act prohibits Federal employees from disclosing trade secret information unless ''authorized by law.'' 19 U.S.C. 1905. The U.S. Industry Interests argue that such disclosure of confidential service contract information to other Federal agencies is not authorized by law because there is no language in OSRA specifically granting that authority and the legislative history relied on by the Commission followed, rather than preceded, the adoption of S. 414, the Senate bill which became OSRA. As was discussed, *supra*, this argument is unconvincing because section 8(c)(2) remained unchanged in the final version of OSRA, and the statements were made on the same day the Senate passed S. 414.

Furthermore, the Cargo Preference Act requires DOD to use U.S.-flag vessels to transport supplies unless ''the freight charged by those vessels is excessive or unreasonable,'' and prohibits those vessel operators from charging rates that are ''higher than the charges made for transporting *like goods for private persons*.'' 10 U.S.C. 2631(a) (emphasis added). Moreover, the Supreme Court has recognized that the Competition in Contracting Act requires that the government be charged ''fair and reasonable'' prices for the purchase of supplies and services. *Paul* v. *United States*, 371 U.S. 245 (1963); *see also* 10 U.S.C. 2304, 2305. These statutes appear premised on the assumption that certain pricing information will be made available to the relevant agencies.

[3] ''To the extent the legislation is a restatement of the 1980 [Paperwork Reduction] Act, as amended in 1986, the scope, underlying purposes, basic requirements, and legislative history of the law are unchanged. To the extent legislation modifies provisions in current law, the amendments are made strictly for the purposes described in this report, and in order to further the purposes of the original law.'' H.R. Rep. No. 104–37 at 2, 1995 U.S.C.C.A.N. at 165.

[4] In the IFR, the Commission addressed and rejected the U.S. Industry Interests' argument that the colloquy between Senators McCain and Hutchison is of limited value for the purpose of legislative history because it followed, rather than preceded, the adoption of the bill which became OSRA. 64 FR at 11188. The U.S. Industry Interests seek to incorporate that argument by reference in their comments made in response to the IFR. Because no new arguments were made in regard to that issue, it is unnecessary for the Commission to address that argument again.

The Cargo Preference Act entitles DOD to the same rates that other commercial shippers are charged for the transportation of like goods.[5] As the majority of international cargo will be moving under service contracts, we agree with MTMC's argument that the examination of publicly available tariff rates will be less indicative of what are fair and reasonable rate levels than the examination of service contract rates. As tariff and service contract rates could vary significantly, DOD would need to have access to such service contract rate information to ensure that it is being offered equivalent rates for like services and thus fulfill its statutory mandate. Moreover, Federal agencies may require access to such service contract rate information in order to comply with the requirement of the Competition in Contracting Act that they purchase fair and reasonable rates.

Therefore, OSRA and the accompanying legislative history, the Cargo Preference Act, and the Competition in Contracting Act all authorize the disclosure of confidential service contract information filed with the Commission to other Federal agencies. The U.S. Industry Interests, however, further argue that, assuming that the legislative history authorizes the disclosure of confidential service contract information to other Federal agencies, such disclosure would be limited to fulfilling the requirements only of the Cargo Preference Act. As discussed, *supra*, the legislative history only prohibits disclosure to the public and reflects that any Federal agency that requires access to confidential service contract information as necessary to its statutory functions may be entitled to it. Because the legislative history of OSRA indicates that Congress did not wish to limit the agencies with which the Commission should cooperate, but instead used the term ''other federal agencies,'' the Commission interprets this to include agencies other than DOD, as well as laws other than the Cargo Preference Act of 1904. Therefore, these regulations do not attempt to define every situation in which the requested information is relevant to the purposes of the requesting agency.

The U.S. Industry Interests also assert that disclosing service contract information to other Federal agencies would necessarily guarantee that an agency's procurement official would use that information to seek better terms for the agency. Assuming that another Federal agency is entitled to such information in order to monitor compliance with the Cargo Preference Act, the U.S. Industry Interests argue that only an employee at the requesting agency who is independent of the procurement process should have access to the information for such monitoring. Thus, the U.S. Industry Interests' suggestion would compel the Commission to dictate by MOU how DOD conducts its procurement procedures in order to obtain service contract information. The Commission will not attempt to dictate internal DOD procedures or policy. Furthermore, this issue is beyond the scope of this proceeding.

Finally, the U.S. Industry Interests request that the Commission add language to § 530.4 to require it to enter an MOU with any agency to which it discloses confidential service contract information and, prior to execution of such MOU, to publish it for public comment. The U.S. Industry Interests argue that because of the ''potential substantive impact'' of such an MOU, it must be adopted in accordance with notice and comment procedures under the APA. We disagree. An MOU can be formulated in the course of a rulemaking proceeding, but it need only be subjected to notice and comment procedures if it makes a substantive impact on individual rights and obligations. 5 U.S.C. 551(4), 553; *see also Paralyzed Veterans of America* v. *West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998); *Chem Serv., Inc. v. Environmental Monitoring Systems of EPA*, 12 F.3d 1256, 1267 (3d Cir. 1993); and *Reynolds Metal Com.* v. Rumsfeld, 564 F.2d 663, 669 (4th Cir. 1977). Thus, the MOU would have to either diminish or increase the rights or obligations of the parties to a service contract in order to be considered substantive. *See Reynolds Metal Com.*, 564 F.2d at 669.

The parties to a service contract must file the service contract confidentially with the Commission. Because DOD or other Federal agencies are authorized to collect the same information in order to comply with the Cargo Preference Act and the Competition in Contracting Act (as authorized by the Federal Acquisition Regulations, 48 CFR parts 9, 15), the service contract parties' right to confidentiality would not be diminished by disclosing this information pursuant to an MOU. A Federal agency that needs service contract information to fulfill its statutory functions would appear to be entitled to such information already. As such, even if an MOU were promulgated by a rulemaking, it would be procedural under section 553 of the APA, not subject to notice and comment. The Commission declines to add language to § 530.4 to require rulemaking or notice and comment procedures before it can execute an MOU with another Federal agency.

Moreover, the Commission is not inclined to add language to the rule itself requiring that it enter an MOU. Such language was not noticed in the rule for public comment, and therefore, is beyond the scope of this proceeding. As we have already stated in the supplementary information section of the IFR,

> the Commission shall require a requesting federal agency to enter into a Memorandum of Understanding that it will protect the confidentiality of any information it receives from the Commission and that such information is necessary to its statutory functions, and adopts as final the language in § 530.4 of the proposed regulations.

64 FR at 11188. The Commission therefore adopts as final the language of § 530.4 as it appeared in the IFR.

D. Section 530.5(a), (b)—Duty to File and Filing by Agents

NITL supports the Commission's regulations placing the duty to file upon the carrier party (§ 530.5(a)), but allowing the service contract to be filed by a ''duly agreed upon agent as the parties to the service contract may designate, and subject to conditions as the parties may agree.'' § 530.5(b). NITL points out that this clarification is important due to the changes made by OSRA which authorize individual contracting by members of carrier agreements and which allow for confidentiality of contract terms. NITL asserts that the language of the rule properly provides for flexibility, and leaves the matter appropriately as one to be decided by the parties to the contract. Because the use of an agent for filing may increase risks to confidentiality, NITL points out, some shippers may legitimately prefer that an agent not be used, and insist on a provision against such use of agents in their service contracts.

NITL's commentary does not request any further clarification or change to the Commission's IFR. This section of the IFR is confirmed as final.

E. Section 530.6—Shipper Status Certifications

1. Extending Provisions to Groups of two or More Unrelated Shippers

Sections 530.6(a) and § 530.8(b)(9) of the Commission's IFR carry over an exception for shippers' associations to the requirement that all shippers list their names and addresses and that all shippers certify their status in their

[5] The U.S. Industry Interests point out that the Cargo Preference Act does not require that the government be given rates *lower* than commercial shippers. Neither MTMC nor the Commission has proffered this argument, and in fact we agree that the statute only requires that the government receive *equivalent* rates for like goods.

service contracts. DuPont recommends that the Commission extend these provisions for shippers' associations to include unrelated groups of shippers which choose to enter into a single service contract, and make conforming changes to § 530.9(e)(2) for this expansion. DuPont asserts that the exception for shippers' associations was created in response to ''marketplace realities'' and that it ''helps protect the integrity of the shippers'' association without unduly interfering with the ability of the FMC to enforce the law.'' DuPont at 2. Extending this provision to unrelated groups of shippers which enter into service contracts, DuPont argues, would result in ''more equitable treatment'' of shippers which join together to enter into service contracts, whether as members of associations or as unrelated groups.

This request was not raised in comments responding to the NPR, and the Commission declines now to expand its treatment of shippers' associations to unrelated groups of shippers. As of yet, the Commission has had little indication, besides DuPont's brief and rather general comments, of how unrelated groups of shippers will come together to enter into service contracts. Furthermore, there is difficulty in expanding the treatment of shippers' associations to unrelated shippers groups: while shippers' associations generally can provide a list of members who are legally obligated to fulfill the terms of a service contract, shippers who are unrelated may not be able to provide such a list, because one shipper cannot impose such obligations on other, unrelated shippers who have not signed the service contract. When the shipper status certification was first introduced, the Commission found that the requirement of section 10(b)(15) of the Act (certification) (renumbered as section 10(b)(12) by OSRA) required that ''such certification should encompass not only the signatory shipper, but any affiliates or members of the shippers' associations entitled to ship under the service contract.'' 56 FR 1496. Therefore, DuPont's request is denied.

2. Shipper Status Certifications Generally

NITL reiterates the comments it made to the Commission in response to the NPR: namely that the shipper status certification is unnecessary and that its purpose is unclear. NITL argues that because parties are free to complain to the Commission if they believe they were treated in an illegal fashion, and because OSRA has narrowed the discrimination prohibitions, the Commission should conduct investigations on a case-by-case basis rather than take the IFR's monitoring approach, to justify the status certification requirement. NITL at 9.

The Commission has examined this comment previously and rejected it. When the Commission examined the predecessor of § 530.5 (originally § 581.11) in 1991, it found that this approach would give the Commission ''the opportunity to closely monitor all service contracts to ensure that they are not improperly used by NVOCCs not in compliance with the Act.'' Docket 91–1, *Bonding of Non-Vessel-Operating Common Carriers*, 56 FR 51987, 51992. We reiterate that the shipper status certification requirement serves both to remind shippers in what capacity they may enter into service contracts, and to assist carriers to ensure they enter into a service contract only with compliant NVOCCs.

Sea-Land, OCWG, and NITL take exception to the following statement in the supplementary information section of the IFR which was part of the Commission's reasoning behind a requirement that a shipper status certification be filed with each service contract:

> OSRA prohibits discrimination and refusals to deal based on anything other than valid transportation factors (such as volumes) and the regulation as proposed intends to guard against such discrimination, prohibited by section 10(b)(10) of the Act.

64 FR at 11190. The comments maintain that this language misinterprets the scope of the prohibited acts under the OSRA. The three commenters complain first, that the Commission improperly confused refusals to deal and negotiate with discrimination, and second, that the statement incorrectly expands the Act's prohibitions on discrimination.

NITL asserts that the Commission's statement is an over-broad characterization of the discrimination prohibitions of the Act which have been substantially narrowed by OSRA with respect to service contracts. NITL urges the Commission to clarify the application of the discrimination prohibitions with regard to service contracts. Sea-Land also requests that the Commission clarify that service contracting discrimination prohibitions are limited to sections 10(b)(5), 10(b)(9), 10(c)(7) and 10(c)(8). Concurring with Sea-Land's comments, OCWG argues that differentiating service contract rates and terms between shippers for any reasons other than those prescribed in sections 10(c)(7) and (8) is entirely lawful in joint service contracts offered by ocean common carriers. OCWG at 3–4.

We concede that in our effort to be succinct, the statement objected to by the commenters was over-broad and unclear. OSRA does retain prohibitions against refusals to deal and negotiate as well as against discrimination in certain circumstances in section 10.[6] Sections 10(b)(5), 10(b)(9), 10(c)(7) and 10(c)(8) of the Act refer to discrimination; section 10(b)(10) of the Act prohibits unreasonable refusals to deal; and section 10(c)(1) prohibits concerted action resulting in unreasonable refusals to deal. Further clarification is unnecessary.

F. Section 530.7—Duty to Labor Organizations

ILWU comments that the incorporation of the word ''ordinarily'' into the regulation's definition of ''reasonable period of time'' to respond to a labor request, ''invites a delayed response from the carriers, and inevitably raises a host of tangential issues that will have to be investigated and perhaps even litigated.'' ILWU urges the Commission to avoid this potential waste of resources by deleting ''ordinarily'' from the definition of ''reasonable period of time.''

We find no reason to revise the approach taken by the Commission in the IFR; only experience under this new statutory provision will reveal whether more stringent regulations are warranted. The Commission reiterates its expectation that carriers will comply

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[6] Section 10 of the Act reads, in pertinent part,

(b) Common carriers. No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

* * * * *

(5) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any port;

* * * * *

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

* * * * *

(10) unreasonably refuse to deal or negotiate;

* * * * *

(c) Concerted action. No conference or group of two or more common carriers may—

* * * * *

(1) Boycott, or take any other concerted action resulting in an unreasonable refusal to deal.

* * * * *

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries.

with the spirit of the legislation and respond promptly to requests from labor organizations for information.

G. Section 530.8—Filing of Service Contracts

1. Transition Issues and Contingency Plans

OCWG, CENSA and NITL express concern about the Commission's filing systems' abilities to accommodate the rush of filings they predict to occur early in May. NITL supports the Commission's decision to accept before May 1, 1999, service contracts in the new system effective on or after May 1, 1999. This, NITL asserts, should avoid an anticipated rush of filings on May 1 and likewise avoid overburdening the internet-based system on May 1. CENSA comments that, because neither of the proposed electronic systems are currently operational, in the event the internet-based system is not available at least ten days prior to May 1, 1999 (which is April 21, 1999), filers should be permitted to file in the current paper format until the system is operational, and should be granted a grace period after the system is operational (implicitly also 10 days) before filers will be required to use the new system.

Similarly, OCWG urges the Commission to adopt a contingency plan for the filing of service contracts in the event that the internet-based system is not available for filing by April 20, 1999. OCWG asserts that thousands of service contracts will be filed for effect on May 1, and as such, the volume of filings both before and after May 1 will be enormous. OCWG suggests that the Commission allow for paper or diskette filing beginning April 20 and continuing until 30 days after the internet-based filing system becomes available. This, OCWG argues, would allow both the industry and the Commission to make a more gradual transition, and is similar to the approach the Commission took when it made the transition from paper tariffs to the Commission's Automated Tariff Filing Information (''ATFI'') system. Finally, OCWG comments that it would not object if those service contracts filed in paper format during the transition period were required to be re-filed via the internet system at a later date, provided there was a reasonable period allowed for making such refilings. Such a contingency plan, OCWG suggests, would provide for a smooth transition to electronic filing while ensuring there is no commercial disruption due to the unavailability of the internet-based system.

The Commission's IFR introduced two service contract filing systems: option 1 (''internet-based'') and option 2 (''dial-up''). Presently, the Commission is confident that both systems will be available on May 1. Indeed, the internet-based system will accept filings on April 26. In addition, as announced in press releases and on the Commission's website, the Commission's Office of Information Resources Management (''OIRM'') conducted certification sessions for the dial-up system in which filers test their filing software on April 22 and 23.

The Commission has taken other steps to help filers be prepared to file as soon as the Commission's systems are operational. On April 8, 1999, OIRM sent letters to entities currently registered to do batch filing in the ATFI system, requesting an indication of their intent to register in the new systems. Another reminder of the registration requirement was also placed on the Commission's website by OIRM. Based on all of the above preparations, therefore, a transitional alternative filing plan is not deemed necessary.

As for the ongoing contingency plans suggested by the comments, the Commission is confident that the systems will be able to receive a large volume of filings in the early days of May. Both systems will be available to receive filings 24 hours each day and 7 days per week. Therefore, the times that filing will be unavailable to filers would appear to be rare. Of course, there may be minutes or hours in which either of the systems will be ''down'' and will be unavailable to receive filings, whether for scheduled maintenance or for unscheduled interruptions due to telephonic or other systemic problems. Contrary to the commenters' concerns, however, the Commission does not anticipate that these brief periods of unavailability will create interruptions of commercial transactions on the scale implied by the comments.

However, the Commission wishes to further allay concerns as to the capability of the systems to accept the amount of filings that may occur around May 1, or at some time in the future, by providing for a suspension of the timeliness requirement of the rules in the event that the filing systems malfunction. The Commission therefore has adopted a limited exception from the requirements of §§ 530.8(a) and 530.14(a) (that the service contract must be filed before any cargo may be carried under it) in situations in which the Commission's filing systems are unavailable for twenty-four (24) consecutive hours or more. This limited exception requires filing to be done at the latest by twenty-four (24) hours after the system returns to service. Also, this limited exception will only arise in situations where the Commission has verified that the filing system is unavailable to all filers, and not, for instance, when the filer's own computers or communications systems are non-functional. The Commission therefore adds paragraph (e) to § 530.8.

2. Appendix A—Registration

While the Commission received no formal comments on the matter, several informal requests for information indicate that there is some confusion over registration for filing under both internet-based and dial-up systems. First, all of a carrier's, conference's or agreement's service contracts must be filed in one and only one of the systems. Second, while a carrier, conference or agreement may only be registered to file in one of the systems, a publisher which files on behalf of many carrier parties, may be registered in both systems. However, the regulation requires that a publisher must file an entity's service contracts in only one of the systems. Therefore, to make this clear, we revise Appendix A paragraph I., Registration, Log-on ID and Password.

H. Section 530.8(c)(2)—Cross-Referencing

As it appears in the IFR, § 530.8(c) reads,

> (c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:
> (1) Be uncertain, vague or ambiguous; or
> (2) Make reference to terms not explicitly contained in the service contract filing itself, unless those terms are contained in a publication widely available to the public and well known within the industry.

CENSA is concerned that the revision of § 530.8(c)(2) may confuse filers and lead them to mistakenly conclude that a service contract may not refer to a tariff or a service contract register filing. CENSA points out that, as originally proposed by the Commission in the NPR, § 530.8(c)(2) specifically permitted cross-referencing to tariff publications. OCWG also comments that in revising § 530.8(c)(2), the Commission inadvertently omitted language which would have allowed cross-referencing to tariffs and service contract registers. Both CENSA and OCWG suggest that the Commission revise the provision to read as follows:

> . . . make reference to terms not explicitly contained in the service contracts filing itself, unless those terms are contained in: (i) a tariff publication in accordance with the requirements of 46 CFR part 520; or (ii) a service contract register filed with the Commission; or (iii) a publication widely available to the public and well known within the industry.

P&O supports the OCWG comments on this section. P&O requests that the Commission also clarify that service contracts may cross-reference their own or their conference tariff; their service contract register; or publications that are widely available to the public and well known within the industry (including, for example, whether published as a tariff relating to hazardous materials or privately published as a register for intermodal equipment). Further, P&O argues that cross-referencing will be an essential element in multi-trade service contracts, and the Commission must ensure that its regulations on cross-referencing do not preclude carriers from making such multi-trade contracts in a ''commercially acceptable manner.'' P&O does not elaborate with particularity on how such multi-trade contracts might be affected.

In its NPR, which proposed only one filing system modeled on ATFI, the Commission specifically solicited comments from the industry on whether the provision of a ''service contract register,'' in which service contract boilerplate may be filed, would be desirable. The comments were generally positive, and the Commission determined that the first proposed system (''dial-up'') would have the capability of such register filings. There were few other details given in the IFR regarding register filings. 64 FR at 11197.

There is a dichotomy between the two filing systems due to their technological configurations and their distinct approaches to filing: the dial-up system requires an ''organizational record'' filing which has the ability to also accept ''register'' filings; the internet-based system has neither ''organizational record'' requirements nor provisions for ''register'' filings. With the major revisions made in the IFR, the technological question of whether such a ''register'' would be part of the internet-based system was not specifically discussed.

The guiding concept of the internet-based filing system was principally that the carrier party to the service contract would be able to file the complete, commercial agreement it had entered into with the shipper party. The matter of a register was not specifically considered for the internet-based system, because that system, in contrast to the dial-up system, would allow ''free text'' and not require the more rigidly formatted line items of the dial-up system. For the internet-based system, the principle was that the filer would simply transmit the contract as agreed to by the parties and executed by them, via the internet and into the Commission's database. In other words, whatever document the parties had signed would be identical to the document transmitted to the Commission. All the ''boilerplate'' of such contracts would be included in them, thereby eliminating any necessity for a ''register'' filing. Indeed, such ''register'' filings would appear to impose additional burdens of multiple filings for what could now easily be accomplished in a single filing.

Furthermore, the Commission is concerned that adopting the language suggested by the three aforementioned commenters may lead to situations in which shippers are party to service contracts referring to boilerplate which is filed in a service contract register which the shipper may have never read, and to which it would necessarily have no access from the Commission after filing. Therefore, the Commission has added a caveat to the allowance for cross-referencing material contained in a service contract register: the material filed in the service contract register and referred to in the service contract must be available to the other parties to the contract. Further, we wish to make it absolutely clear that changes to boilerplate which affect service contracts must be treated as amendments, and as such, subject to the mutual agreement of the parties. Such ''registers'' will only be available in the dial-up system.

Finally, because tariffs are published and widely available, cross-referencing to those publications in service contracts does not appear to pose any new issues. The Commission notes, therefore, that a tariff published pursuant to part 520 of the Commission's regulations will be considered ''a publication widely available and well known within the industry'' for the purposes of cross-referencing in service contracts.

The Commission therefore revises § 530.8(c) to clarify its approach to cross-referencing, particularly references to ''service contract register'' filings.

I. Section 530.10—Cancellation

AAEI comments that § 530.10 directly contradicts section 13(f) of the Act as revised by OSRA.[7] AAEI asserts that § 530.10 imposes the following choice on parties to service contracts: that they contemplate a shortfall (*i.e.* a failure to meet minimum cargo commitments) with a liquidated damages provision or they will be subject to § 530.10(d), which states that further or continued implementation of the service contract is prohibited; and that the cargo previously carried under it is to be re-rated at otherwise applicable tariff rates. AAEI doubts the legality of this provision, and asserts that it contradicts the ''black and white letter of the law in section 112(c)(3)'' of OSRA. AAEI further states that the failure of a contract to include a liquidated damages clause does not render the contract illusory. AAEI asks the Commission to consider whether it ''makes sense'' for example, to require the re-rating of 9,900 FEUs of cargo which has already been shipped when there has been a shortfall of only 100 FEUs in a service contract commitment for 10,000 FEUs. Finally, AAEI asserts that the proper penalty for fraudulent misrepresentation by a shipper is the imposition of monetary penalties, not the re-rating of previously carried cargo.

DuPont comments that the Commission's proposed ''solution * * * is worse than the original problem it sought to cure.'' DuPont at 5. DuPont, relying on its ''vast experience in the field of transportation contracting'' asserts that ''no matter how expert, complete and thorough negotiations are, the parties will inevitably experience barriers to fulfilling all of their obligations.'' DuPont at 5. Mandating re-rating, in situations in which the parties in good faith cannot meet their contractual obligations and elect to mutually terminate, is inappropriate in DuPont's estimation.

DuPont therefore urges the Commission to revise § 530.10(d)(2) to make re-rating permissible, but not mandatory, subject to Commission order, and proposes the provision read as follows:

> In the event of cancellation as defined in § 530.10(a)(3) * * * (ii) the cargo previously carried under the contract * * * may, pursuant to order by the FMC based upon its finding of a purposeful violation of applicable regulation, be re-rated according to the otherwise applicable tariff provisions.

This provision, DuPont asserts, would permit more lenient treatment of the ''unsophisticated, small, or first time shipper (or carrier) for its lack of foresight or experience'' and re-rating would only be imposed if the Commission found an intent to defraud or avoid compliance. DuPont at 6.

AAEI appears to have misread both the Commission's supplementary information and the text of the IFR itself. The supplementary information makes it clear that other provisions (*i.e.*

[7] Section 13(f) reads, in pertinent part,

> Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.

not only liquidated damages provisions) can ensure that the service contract has a fall-back rate for shortfalls. 64 FR at 11204. The text of the regulation itself defines cancellation as

> an event which is unanticipated by the service contract, in liquidated damages *or otherwise*, and is due to the failure of the shipper party to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the carrier party. § 530.10(a)(3)(emphasis added).

The regulation, rather than being a penalty provision, is a method by which the ''applicable rate'' can be determined, and is invoked only when the parties have chosen not to make other provisions.

DuPont's recommendation that the re-rating provision be subject to Commission order, not automatic, and optional for the Commission to impose, may create uncertainty in the industry. DuPont's comment indicates its belief that this requirement is a penalty provision. Again, the requirement in § 530.10 for re-rating is only a last resort means of determining the applicable rate when the contract parties make no other provision and fail to amend the contract.

''Penalizing'' Shippers for Operating Under Unfiled Service Contracts

NITL states that it is unfair to ''penalize'' shippers for violations of §§ 530.8(a) or 530.14(a) (which require that a service contract or amendment be properly filed with the Commission before cargo moves under it) when they have no control over the timeliness or method of such filing or ensuring that the filing is not defective. NITL asserts that shippers which tender cargo for carriage under a service contract which they believe to have been filed, should not be subject to such violations. NITL describes a scenario in which an innocent shipper may have been told by its carrier that the service contract has been filed, and then would be subject to penalties for violation of Commission regulations. NITL complains that it is not clear what the consequences for a shipper would be in such a case, and requests that the Commission clarify that it will not hold a shipper liable for penalties and will protect the shipper from re-rating in such a situation.

DuPont expresses concern about shipper parties not receiving independent, written confirmation of service contract and amendment filings, but facing re-rating or penalties, as well as legal defense costs for failure to file or improper filing. To eliminate this potential problem, therefore, DuPont urges the Commission to provide shipper parties with written (or electronic) notice when service contracts or amendments are filed or rejected within 5 working days of the filing or rejection. This approach, DuPont suggests, would eliminate the potential for a recreation of the motor carrier filed rate problem. In the alternative, DuPont proposes that shippers be held harmless and permitted to carriage pursuant to an otherwise valid contract which the carrier either failed to file or failed to notify the shipper if rejected by the Commission.

There are several reasons why the Commission declines to adopt DuPont's suggestion either to hold shippers harmless from such failures to file or to require that the Commission send confirmation of filing to the shipper as well as to the carrier. First, the filing requirement has been part of the Act and Commission regulation since 1984, and we are unaware of any shipper having been held to have violated section 10(a)(1) of the Act when it had a reasonable belief that the carrier had duly filed the service contract. Second, we note that shippers may require confirmation of filing from their carrier as part of the negotiation process, if they wish to do so. Third, the shipper may have some indication of whether or not a service contract has been duly filed by verifying that the ET for that service contract has been published by the carrier. Finally, with respect to NITL's scenario, the Commission's position can only be determined in the course of proceedings with parties in interest arguing the facts before an administrative law judge. We note only that while it is not the shipper party who has the obligation to file under Commission regulations, if it operates under an unfiled service contract, it may violate section 10(a)(1) of the Act. That section only applies to knowing and willful actions, however, rather than a question of absolute liability, and would therefore not apply to a shipper unknowingly victimized by a carrier's failure to file. Furthermore, there is nothing in the legislation which suggests that the Commission can immunize shippers from the assessment of civil penalties. However, under section 13(f), a shipper's culpability is part of any consideration in an assessment of civil penalties.

In response to DuPont's comments, and as the Commission has already discussed in the IFR, section 13(f) would appear to protect a shipper against a claim by a carrier for undercharges. 64 FR at 11204. The Commission has already stated its position in the IFR, namely that section 13(f) does not operate to nullify section 10 requirements; that the Act must be read so that every section is given meaning and harmonizes with the others;[8] that section 13(f) should not be interpreted so as to make service contracts illusory, or allow parties to take advantage of service contract rates without being bound to a contract;[9] and that the Commission's provisions for maximum flexibility (*e.g.*, amendments, contingencies, and liquidated damages) are adequate methods by which the parties may avoid the application of § 530.10 and protect their commercial interests. Therefore, the Commission makes no revision to this section and adopts it as final as it appeared in the IFR.

J. Section 530.12—Publication

P&O, ETM, OCWG and CENSA comment that the IFR is unclear as to whether the statements of essential terms of service contracts (hereinafter ''ETs''), currently required to be filed in the ATFI system, will remain adequate for compliance with § 530.12 after May 1, 1999. ETM urges that the publication of ETs in ATFI be sufficient for publication under the new regulations, and further that such ETs not be required to be ''re-published'' in a new private system.

ETM argues that ETs of service contracts effective prior to May 1, 1999 were filed in ATFI for two reasons: to meet the filing requirements of the Act and to allow for public notice of the eligibility period for ''me-too'' shippers. As for the ''me-too'' aspect of the publication, P&O and ETM assert that because no further ''me-too'' eligibility is required after the end of the eligibility period, and because the ETs are available to interested parties (presumably in the then-historical ATFI system), to require the re-publishing of such ETs would provide no benefit to anyone and would impose a substantial

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[8] As stated in *Sutherland on Statutory Construction* at § 46.05 at 103:

> A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed.

The Commission must ''strive to implement the policy of the legislature and harmonize all provisions of the statute.'' *Id.* at 104.

[9] Section 10(b)(1) reads, in pertinent part: No common carrier * * * may allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its * * * service contract by means of * * * any other unjust or unfair device or means;

(2) Provide service in the liner trade that—(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a * * * service contract entered into under section 8 of this Act * * *

burden on carriers. ETM appears to assert that service contracts filed effective prior to May 1, 1999 may have an eligibility period which runs beyond May 1, 1999, and that this may be a problem for similarly situated shippers accessing the privately maintained Carrier Automated Tariff Systems (''CATS'') pursuant to Commission regulations at part 520 after May 1, rather than ATFI.

Further, ETM argues, requiring such re-publication would be duplicative and burdensome; the FMC staff would be inundated with reviewing re-published ETs as well as new ETs and determining which publication required a simultaneous filing and which did not. ETM also argues that the filing requirements of OSRA are met if service contracts effective prior to May 1, 1999 are electronically filed by use of ATFI, and, therefore, further filing or re-publication of either ETs or the service contracts themselves should not be required. ETM proposes that the Commission issue the following guidelines for the transition period:

1. Except for amended service contracts, all service contracts with an effective date prior to May 1, 1999 and with an eligibility period that expires no later than April 30, 1999, shall not require re-publication of essential terms or re-filing of the contract on or after May 1, 1999;
2. Amended service contracts with an effective date prior to May 1, 1999 and with an eligibility period that expires no later than April 30, 1999 shall not require re-publication of essential terms or re-filing of the contract on or after May 1, 1999;
3. Amended service contracts with an effective date prior to May 1, 1999 but with an eligibility period that expires no later than April 30, 1999 shall not be re-filed but the essential terms are to be re-published in the Carrier's Automated Tariff System and reference to the eligibility period should be stated in the duration clause;
4. All service contract amendments with an effective date of May 1 or later shall be filed in accordance with the provisions of 46 CFR part 530 and the essential terms shall be re-published in the Carrier's Automated Tariff System.

CENSA also asserts that requiring the re-publication of ETs of ''carry over'' service contracts will not benefit the carriers, their customers or the Commission. CENSA points out that many service contracts will continue. P&O, CENSA and OCWG urge the Commission to grant a blanket exemption from such republication; or in the alternative, give carriers and conferences a period of time over which to re-publish these ETs in their CATS.

P&O agrees with CENSA and ETM that ETs previously published in ATFI should not be required to be republished in CATS by May 1, 1999, because there is little regulatory purpose in such a requirement and because republication is time-consuming and expensive.[10] Furthermore, P&O argues, republication will create confusion because new service contract numbers will have to be assigned to such re-published ETs. P&O suggests the Commission grant a blanket exemption, or alternatively that it extend the time for republication to the date of amendment of the ETs or October 1, 1999, whichever comes first.

OCWG also comments that existing service contract ETs, which are published in the Commission's ATFI system, should not be required to be published again in a private tariff publication after May 1, 1999. OCWG asserts that it represents carriers which collectively will have thousands of service contracts which would be affected by such a requirement. Such republication, OCWG asserts, would be burdensome and will have no little or no benefit because there will be no right to ''me-too'' after May 1. Instead of requiring republication as of May 1, OCWG contends, the Commission should require ETs for contracts in effect prior to May 1 be republished the first time the contract is amended after May 1, or by October 1, whichever is later.

1. Eligibility for ''Me-Tooing'

First, with regard to eligibility periods for ''me-too'' rights, it is clear that OSRA completely eliminates ''me-tooing'' of service contracts. OSRA is effective May 1, 1999, and therefore, no shipper can assert ''me-too'' rights after May 1, 1999, regardless of what the eligibility period of the service contract may have been under the Act prior to OSRA's effective date.

2. Accessability to and Maintenance of ATFI

Second, regarding accessability and content in the ATFI database, the Commission reiterates that it will maintain ATFI for historical information only, and access to ATFI will continue as it has been done in the past, by registration, log on and password. ATFI will become exclusively historical on April 30, 1999, as filers will cease to have the ability to file and amend ETs, but will continue to be able to retrieve them.

3. Republication

OSRA requires that ''when a service contract is filed confidentially with the Commission, a concise statement of essential terms * * * shall be published and made available to the general public in tariff format.'' Section 8(c)(3). The Commission has determined that the simplest and least burdensome way for filers to comply with this requirement of the Act is to require publication of ETs as part of the privately published tariff systems. This publication requirement ensures that the shipping public has access to certain very general information on service contracts filed with the Commission. However, for service contracts currently in effect, ETs of such service contracts may not be as readily accessible to the extent that they are still in the ATFI system. Allowing currently effective service contracts' ETs to appear in two places (*i.e.* the ATFI historical database and the active CATS publication) may add a degree of complexity for those seeking access to the ETs, but any confusion would be minimal, especially as compared to the cost and burden on the filers if republication were required.

Therefore, the Commission will not require that ETs for service contracts previously filed in the ATFI system, but which continue in effect after May 1, be published in the CATS system. However, the Commission wishes to make it clear that pre-May 1 service contracts which are amended after May 1 will require republication of ETs as soon as possible after the filing of the amendment (comporting with the requirement of § 530.12(g)) regardless of whether or not the four essential terms are affected by the amendment.

K. Amendment Filing

Although the Commission received no formal comment on this matter, several informal inquiries have indicated that filers need further guidance as to how pre-May 1 service contracts are to be amended after May 1. The internet filing system will not require the re-filing of the original service contract. The dial-up system, however, will require that the filer re-file a restatement of the service contract. This is due to the fact that the dial-up system requires a data file with which amendments must be associated; amendments may not stand on their own. In the dial-up system, all reissued service contracts will be required to:

(1) Have a current effective date which is no earlier than the system assigned filing date (Appendix to Part 530, section II. H. 2);

(2) Employ an amendment code of ''I'' and an amendment number of ''null'' or ''0'' (§ 530.10(b)(2) and Appendix to Part 530, section II D.);

(3) Contain all twelve mandatory terms and the exact term titles

[10] P&O comments that it will have 350 such service contracts.

(Appendix to Part 530, section IV. (Format Requirements));

(4) Reflect the latest version of each mandatory term, optional term and any Register Rules for each pre-OSRA term and rule; and

(5) State at term 12 that the service contract was ''reissued'' and cross-reference the FMC File Number of the pre-OSRA filing of the ET filing(s) in ATFI.

L. Section 530.12 (c)—Multiple Carrier Party Contracts-Publication of ETs

CENSA characterizes § 530.12(c) as giving multiple carrier parties the option of publishing either in their individual tariffs or in a conference tariff, which CENSA asserts is ''logical and reasonable.'' CENSA believes, however, that the rule's language is contradicted by the language of the supplementary information, which requires that ''essential terms of an individual service contract entered into by multiple carrier parties to a conference must be filed in the conference tariff.'' CENSA urges the Commission to revise the supplementary information to confirm that carriers would have an option of where to publish the ETs of a multi-carrier contract. CENSA asserts that this flexibility would not hinder the Commission's ability to carry out its regulatory responsibilities.

OCWG urges the Commission to revise § 530.12(c) as follows:

(c) *Location.* The statement of essential terms shall be published in an automated tariff publication in accordance with 520.12(c)(1) through (4) and in conformance with the format requirements set forth in part 520 of this chapter. The statement of essential terms may be published in the following locations:

(1) *Conference service contracts.* In the conference tariff(s).

(2) *Individual service contracts.* In the carrier's individual tariff publication or in the tariff publication of a conference of which the carrier is a member, at the carrier's option.

(3) *Multi-party contracts.* For a multi-party individual service contract entered into pursuant to the authority of a conference agreement, in each of the participating carriers' individual tariff publications or in the tariff publication of the conference, at the carriers' option.

(4) *All other service contracts.* In the individual tariffs of the participating carrier(s).

The foregoing language, OCWG asserts, would increase carrier flexibility by giving the members of a conference the choice of where to publish. It would also, OCWG asserts, make clear that individual carrier members of conferences may have their own tariff in which they may publish ETs even if they participate in a conference rate tariff. OCWG argues that this may be necessary to comply with the legal requirements of other jurisdictions, particularly those of the European Union. Giving carriers these options, OCWG argues, would not inhibit or discourage individual contracting, nor would it complicate the Commission's compliance monitoring. ETs belonging to carriers/conferences and individual/agreement service contracts but published in the same tariff, OCWG asserts, will be easily distinguished because the ET must contain the FMC agreement number for conference and non-conference agreement service contracts. OCWG also complains that allowing agents to file, but restricting who the carrier party may appoint to publish ''makes little sense.'' OCWG at 8. They argue that because carriers are ''very unlikely to permit anyone other than their employees or their tariff publisher to access their tariff publication,'' the approach of the IFR ''effectively prohibits carriers from using an agreement secretariat to publish the ETs of their individual service contracts.'' OCWG at 8.

We agree with CENSA that there appear to be conflicting approaches to publishing between the text of the rule itself and the language of the supplementary information. The supplementary information included a discussion of the competing interests behind the publication requirement for multiple carrier service contracts: on the one hand avoiding confusion to the public and ensuring that ETs can be located by the public, and on the other, minimizing the burden on the publishing carriers. 64 FR at 11200–11201.

Despite OCWG's and CENSA's arguments regarding flexibility for publication of multi-party ETs, however, the Commission has revised the language of the regulation to make it clear that conference ETs must appear with the conference tariff; individual ETs must appear with the individual tariff; and non-conference agreement ETs must appear with each of the individual carriers' tariffs. Where non-conference agreement or conference ETs may appear is *not* optional. While allowing such options would give carriers ''increased flexibility,'' we are not persuaded that doing so has the same implications as those for filing of confidential terms, and therefore it appears not to be particularly relevant whether or not it is ''entirely consistent with the approach the Commission has taken with respect to the filing of service contracts.'' OCWG at 8.

OSRA clearly distinguishes filing from publication. The publication of ETs is required in order that the information is reasonably available to the public. If the Commission were to allow the option suggested by these comments, the public may only with significant difficulty ever be able to find non-conference agreement ETs or conference ETs. This would not appear consistent with the statutory requirement that the ETs be ''made available to the public.''

The Commission has already determined that having ETs published alongside the carrier party's CATS is the simplest and least duplicative approach to such publication. As the Commission stated in the IFR, the statement of essential terms of

> [i]ndividual carrier service contracts are to be published alongside that carrier's tariff matter * * * * Multi-party service contracts entered into under the authority of a conference must be published alongside the conference tariff, and not in the individual member's tariff * * * * For service contracts jointly entered into by multiple parties of a non-conference agreement, the publication of the statement of essential terms will be published as for individual service contracts [*i.e.* in each of the individual carrier's tariffs] but note must be made of the relevant FMC-designated Agreement number.

64 FR at 11200–11201.

For independent individual service contracts entered into by a conference member, therefore, ETs must be published with the individual carrier's tariff publication, and not with the conference's tariff. As the Commission previously found, ''[a]llowing such would lead to public confusion.'' 64 FR at 11201. For multi-party service contracts, the IFR appears to allow non-conference agreements a choice as to where their ETs could be published (*i.e.* in a conference's tariff or in an individual tariff). The language of § 530.12(c)(2) is revised to clarify that for non-conference agreement service contracts, the ETs must be published in each of the individual participating carriers' tariffs, noting the FMC-assigned agreement number pursuant to which the service contract is entered.

CENSA alternatively asserts that the Commission should permit non-conference agreements to ''create a tariff in which the ETs of the service contracts of its members may be published either by themselves in their own tariffs, or through an agreement secretariat created for that purpose.'' CENSA at 2. Such an approach, CENSA argues, would neither hinder individual contracting nor compromise the confidentiality of contract terms. Furthermore, CENSA comments, such an approach could enhance the Commission's ability to

determine the level of contracting taking place pursuant to a non-conference agreement, because the ETs would all be published in a single tariff.

Allowing non-conference agreements to publish tariffs may be convenient; however, sections 3(7) and 8(a) of the Act reserve the ability to publish a tariff solely for ''carriers and conferences.'' Non-conference agreements are precluded from publishing tariffs by the statute. If the IFR's approach to the publication of ETs for non-conference agreements or for individual carrier members of conferences becomes overly burdensome or confusing to the public, and another approach is therefore warranted, the Commission may then revise the regulations to address such concerns. Before having had experience with the practices of the industry and the concerns of the public, however, it appears to be more prudent to leave this approach in place. Therefore, the Commission has revised the language of § 530.12(c)(2) to clarify with which tariff system multiple carrier service contracts must be filed and to correct a numbering error which appeared in the IFR.

Although the Commission received no formal comments on the provision, there has been informal inquiry about the meaning of the provision of § 530.12 which requires that ETs ''be published as a separate part in the filer's automated tariff publication, conforming to the format requirements of part 520 of this chapter.'' As this language was merely intended to indicate that ETs be located in the carrier's automated tariff system, the Commission has deleted the phrase ''conforming to the format requirements of part 520 of this chapter,'' and to change the term ''publication'' to ''system.'' The balance of the paragraph adequately indicates that ETs must be published in the carrier's automated tariff system. Therefore, § 530.12(c) is revised to address both the issues concerning multiple carrier party service contract filing and format requirements.

M. Section 530.13—Exceptions and Exemptions

USPS urges the Commission to continue a specific exemption to the requirements of this part for the transportation of mail between the United States and foreign countries. USPS recommends that § 530.13(a) be revised to include an exemption to the requirements of the regulation for mail. USPS points out that mail had been granted an exemption in 1976 (Docket No. 75–41, June 22, 1976) to the tariff filing requirements and further argues that this exemption should be carried forward for service contract filing as well.[11] Nor, USPS asserts, did the order find that such an exemption would deprive the shipping public of a means for determining the rates for the carriage of mail, because, with respect to mail, there is no ''shipping public'' other than foreign governments which set the rates applicable to the transportation of their mail. Finally, USPS notes that the 1976 exemption order recognized that under 39 U.S.C. 5005(b)(3), USPS' contracts for the carriage of mail are available for inspection by the general public.

USPS cites 46 CFR 514.3(b)(2) of the Commission's former regulations to support its proposition that service contracts for the carriage of mail in the U.S.-foreign trade are exempt from *both* tariff and service contract filing requirements. Under current practice, furthermore, carriers under contract with the USPS do not file their service contracts with the Commission. USPS argues that there is nothing contained in OSRA which would require a change from current practice. For the foregoing reasons, therefore, USPS urges the Commission to carry forward the exemption for mail to the Commission's regulation on service contracts.[12]

USPS' comment was the only comment regarding section 16 exemptions the Commission received, with the exception of the Household Goods Forwarders Association of America's comments to the proposed rule. USPS did not comment on the NPR, and the Commission did not consider in the IFR whether exemptions which had appeared in the combined tariff and service contract part of the Commission's former regulations (part 514) would continue to have application.

The Commission's regulations on tariffs and service contracts were originally contained in separate parts of the CFR. Subsequently, however, when the ATFI filing system was adopted to accept ETs, the Commission combined its service contract and tariff regulations into one part. As USPS' comment has brought to the Commission's attention that it had inadvertently failed to consider in the IFR the extension of certain exemptions which had been contained in the combined tariffs/service contract rule, the Commission will carry forward the section 16 exemptions the Commission had previously granted and which have relevance for the service contract filing requirements of this part. The Commission has therefore revised § 530.13 to include the relevant Commission exemptions, and further to indicate that terms not particularly defined in this section will have the same meaning they have as defined by the Act itself or by 46 CFR part 520 (Carrier Automated Tariff Systems).

As the Commission previously noted in the IFR, which it now confirms as final, it has received approval from the Office of Management and Budget for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. Also as noted in the IFR, in accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0065. 64 FR 11206.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, the interim final rule removing 46 CFR part 514 and adding 46 CFR part 530 which was published at 64 FR 11186–11215 on March 8, 1999, is adopted as a final rule with the following changes:

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C App. 1704, 1705, 1707, 1716.

2. Amend § 530.3 by revising paragraph (m) to read as follows:

§ 530.3 Definitions.

* * * * *

(m) *Motor vehicle* means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan or sport utility vehicle.

* * * * *

3. Amend § 530.8 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 530.8 Service Contracts.

* * * * *

[11] In that order the Commission found that, while it may move in foreign commerce, mail is not a U.S. export or an item of trade between countries, and thus it is apparent that the exemption would not be detrimental to the commerce of the United States.

[12] USPS also argues that the current regulations, 46 CFR § 514.3(b)(2) indicate that the Commission recognizes that mail transportation is exempt from the Act itself, as well as from its implementing regulations. Further, USPS argues, the Postal Reorganization Act not only preempts the application of the Shipping Act to mail transportation, but further exempts mail transportation by the USPS from all other federal contract laws except those listed in 39 U.S.C. § 410(b). 39 U.S.C. § 5001 *et seq.* Finally, USPS contends, mail is not cargo, and for that reason the Commission's requirements do not apply to contracts for its movement.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous;

(2) Make reference to terms not explicitly contained in the service contract itself unless:

(i) Those terms are contained in a publication widely available to the public and well known within the industry; or

(ii) Those terms are contained in a service contract register filing duly filed in the Commission's dial-up filing system and are available to all parties to the service contract. Service contract register filings are subject to the same requirements of this part as service contracts and amendments.

* * * * *

(e) *Exception in case of malfunction of Commission filing system.*

(1) In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four (24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and § 530.14(a) that a service contract be filed before cargo is shipped under it.

(2) However, service contracts which go into effect before they are filed, pursuant to paragraph (e)(1) of this section, must be filed within twenty-four (24) hours of the Commission's filing systems' return to service.

(3) Failure to file a service contract that goes into effect before it is filed, pursuant to paragraph (e)(1) of this section, within twenty-four (24) hours of the Commission's filing systems' return to service will be considered a violation of Commission regulations.

4. Amend § 530.10 by revising paragraph (d)(1) to read as follows:

§ 530.10 Amendment, correction, and cancellation.

* * * * *

(d) *Cancellation.* (1) An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages appearing in the service contract as filed with the Commission under § 530.8(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

* * * * *

5. Amend § 530.12 by redesignating the second paragraph (c) and paragraphs (d) through (g) as paragraph (d) and paragraphs (e) through (h), respectively, and by revising paragraph (c) and newly redesignated paragraphs (d) through (h) to read as follows:

§ 530.12 Publication.

* * * * *

(c) *Location.* (1) *Generally.* The statement of essential terms shall be published as a separate part of the individual carrier's automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to participate, the statement of essential terms shall be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference's automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers' individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(d) *References.* The statement of essential terms shall contain a reference to the ''SC Number'' as described in § 530.8(d)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed confidentially with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

(g) *Commission listing.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all service contract essential terms publications.

(h) *Updating statements of essential terms.* To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

6. Revise § 530.13 to read as follows:

§ 530.13 Exceptions and exemptions.

(a) *Statutory exceptions.* Service contracts for the movement of the following, as defined in section 3 of the Act, § 530.3 or § 520.1 of this chapter, are excepted by section 8(c) of the Act from the requirements of that section, and are therefore not subject to the requirements of this part:

(1) Bulk cargo;

(2) Forest products;

(3) Recycled metal scrap;

(4) New assembled motor vehicles; and

(5) Waste paper or paper waste.

(b) *Commission exemptions.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter. The following commodities and/or services are exempt from the requirements of this part:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing service contracts which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) Service contracts filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The service contract itself sets forth a rate or charge which will be applied if the contract is canceled, as defined in § 530.10(a)(3).

(d) *Waiver.* Upon filing a service contract pursuant to paragraph (c) of this section, the service contract shall be subject to the same requirements as those for service contracts generally.

7. Amend Appendix A to part 530 by revising the introductory text, paragraph A under the heading Registration, Log-On ID and Password, and by adding paragraph D under the same heading to read as follows:

Appendix A—Instructions for the Filing of Service Contracts

Service contracts shall be filed in accordance with one of the methods described in this Appendix, at the filer's

option. Carriers, conferences, and agreements may only be registered to file in one system at a particular time. Publishers may be registered in both systems, but must file each carrier, conference or agreement service contracts into only one system.

I. Registration, Log-On ID and Password

A. To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC–83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. However, each organization certified prior to May 1, 1999 to perform batch filing of Essential Terms Publications in the Commission's former Automated Tariff Filing Information (''ATFI'') system, will be issued a new log-on ID and password for access to file service contracts. Filers who wish a third party (publisher) to file their service contracts must so indicate on Form FMC–83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued.

* * * * *

D. A carrier, conference, or agreement may be registered to file its service contracts in only one of the Commission's filing systems at any given time. A publisher which files on behalf of many carriers, conferences or agreements may be registered to file into both systems simultaneously, however, each of its clients' service contracts must be filed in only one system. For example, a publisher who files for carrier X and conference Y may file all of carrier X's service contracts into the option 1 (internet-based) filing system, and all of conference Y's service contracts into the option 2 (dial-up) filing system, but cannot file some of carrier X's service contracts in the option 1 filing system and some of carrier X's service contracts in the option 2 filing system.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11058 Filed 4–29–99; 4:01 pm]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 535 and 572

[Docket No. 98–26]

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of March 8, 1999, a final rule amending its regulations governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the Shipping Act of 1984 by the Ocean Shipping Reform Act of 1998. Inadvertently, internal references to part 572 were not revised to reflect the redesignation of that part as part 535. In addition, amendment to a section heading was overlooked in the instructions.

DATES: Effective on May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission published in the **Federal Register** of March 8, 1999, a final rule amending its regulations governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the Shipping Act of 1984 by the Ocean Shipping Reform Act of 1998. Inadvertently, internal references to part 572 were not revised to reflect the redesignation of that part as part 535. In addition, amendment to the section heading for § 535.301 was overlooked in the instructions.

In Docket No. 98–26, published on March 8, 1999, (64 FR 11236) make the following corrections:

26. In redesignated part 535 and the appendices to the part, revise all references to sections in part 572 to reflect redesignation as part 535.

1. On page 11242, in the first column, correct the section heading of § 535.301 to read: ''§ 535.301 Exemption procedures.''

2. On page 11244, in the third column after § 535.803, add amendatory instructions 25 and 26 to read as follows:

25. In Appendices A & B to redesignated part 535, revise the references in the first column to read as shown in the second column wherever they occur:

Remove	Add
572.104(y)	535.104(x).
572.104(bb)	535.104(aa).
572.104(cc)	535.104(bb).
572.104(dd)	535.104(cc).
572.104(hh)	535.104(gg).
572.104(kk)	535.104(jj).

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10897 Filed 5–3–99; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 64, No. 85
Tuesday, May 4, 1999

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

9 CFR Chapter I

[Docket 98–085–1]

RIN 0579–AB09

Aquaculture: Farm-Raised Fin Fish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering establishing programs and regulations for farm-raised fin fish. A national program could help protect the health of farm-raised fin fish, help producers of farm-raised fin fish meet international trade requirements, and help encourage international trade in U.S. aquaculture products. We are asking for comments on whether we should establish such programs and, if so, the type and extent of the programs. We are also asking for comments on whether to use negotiated rulemaking to develop regulations for any programs that we may establish.

DATES: Consideration will be given only to comments received on or before July 6, 1999.

ADDRESSES: Please send an original and three copies of your comment to Docket No. 98–085–1, 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. 98–085–1. 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: Dr. Otis Miller, Jr., National Aquaculture Coordinator, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The United States Department of Agriculture (USDA) has received 21 petitions asking us to promulgate animal health regulations and perhaps other regulatory programs to deal with farm-raised fin fish as livestock. These petitions are from State farm bureaus, industry associations, individual producers, State officials, and businesses that serve aquaculture industries.

One petition requested that we define domesticated farm-raised fish as livestock ''so that USDA can provide farmers with needed services identical to those received by other American farm raised animals.''

Most of the petitions we have received addressed only farm-raised fin fish. However, several addressed a broader range of aquatic species. One letter stated that we should recognize the entire industry—''clams, aquatic plants, alligators, tropical fish, and fish raised for human consumption''—as ''general farming.'' One stated that we should define ''farmed aquatic animals, such as fish and shrimp,'' as livestock. Another asked us to define ''domesticated farm-raised fish and shellfish'' as livestock. Other letters suggested that we consider domestically raised fish and shellfish as livestock, and stated that ''[a]quatic farmers are a diverse group growing a number of species of fish, crustaceans, and mollusks.''

The petitioners are concerned mainly with receiving the same services that domestic producers of livestock receive for animals moving in interstate and foreign commerce. Examples are diagnostic and certification services, protecting the industry by preventing importation of pests and diseases, and supporting commerce by simplifying interstate movement (now, each State sets its own requirements).

Based on the petitions, it is difficult for us to determine what segments of the aquaculture industry want services and exactly what sevices they want. It is also difficult to determine what the different petitioners want to accomplish by inviting Federal regulation.

The Animal and Plant Health Inspection Service (APHIS) is authorized to regulate to protect the health of livestock and poultry in the United States. We have many regulatory programs covering poultry, horses, swine, cattle, and other livestock. Our regulatory programs also cover animals that could transmit diseases or pests of livestock or poultry. Our programs for ''traditional'' livestock are intended to: (1) Prevent the importation of diseases and pests; (2) regulate interstate movement in a uniform manner; (3) provide diagnostic laboratory services; (4) regulate vaccines and biologic reagents used in animals; and (5) control and/or eradicate diseases and pests already found in the United States.

Based on the petitions we have received, we are considering whether to expand services to farm-raised fin fish. We already provide some services to aquaculture industries. Specifically, we provide laboratory diagnostic services, endorse export health certificates for aquatic animals and aquatic animal products, and license vaccines and biologic reagents for use in aquatic animals. We also control damage done by wild birds and other animals to farmed aquatic animals. Some of these services are paid for through user fees and cooperative agreements. If we were to offer additional services and programs, we would need funds to pay for them. We are interested in comments on how such services and programs should be funded.

What Programs and Regulations Should We Establish?

Before we decide whether to propose regulations covering farm-raised fin fish, we want the views and recommendations of all interested persons on the following specific issues:

1. We have received petitions to promulgate rules and regulations concerning domesticated farm-raised fin fish. However, as many of the petitions acknowledge, U.S. aquaculture industries include more than just domesticated fin fish. Letters referred not only to fish, but to clams, alligators, tropical fish (for aquariums), fish raised for human consumption, shrimp, mollusks, and crustaceans. Should we consider regulating only domesticated farm-raised fin fish, or should we consider regulating other aquatic animals as well? If we should consider a broader regulatory program, what species should we include, and why?

2. We already provide some services to aquaculture industries. We provide laboratory diagnostic services, endorse export health certificates for aquatic animals and aquatic animal products, and license vaccines and biologic reagents for use in aquatic animals. We also control damage done by wild birds and other animals to farmed aquatic animals. Should we expand the range of our services? If we expand our services to aquaculture industries, what new or additional services should we consider providing?

3. We currently regulate the importation of livestock and poultry and livestock and poultry products. These regulations are designed to prevent diseases and pests of livestock and poultry from being introduced into the United States. Should we consider adopting regulations to prevent the introduction of diseases and pests of aquatic animal species? If so, should the regulations be similar to those we have for livestock and poultry? If not, how should the regulations be different?

4. We work closely with industry and State representatives to administer many of our current disease control programs. For example, we work with industry and State representatives to control and eradicate brucellosis, tuberculosis, and other livestock diseases. If we develop any regulatory programs for aquatic animal species, what form should our cooperation take?

5. We currently regulate the interstate movement of livestock and poultry and livestock and poultry products. These regulations are designed to prevent diseases and pests of livestock and poultry from being spread within the United States. Currently, we administer several voluntary programs designed to help producers control and eliminate certain diseases in their livestock. The goal of these programs is to eliminate sources of infection, while helping producers improve their stock. For example, we have a program covering scrapie in sheep and goats called the Voluntary Scrapie Flock Certification Program. Should we consider adopting regulations to prevent the interstate spread of diseases and pests of any aquatic species? If we were to adopt regulations covering interstate movement of any aquatic animal species, should we include voluntary programs to help producers control and eliminate certain diseases? If so, what species and diseases should be covered? What should we include in such programs?

How Should We Conduct Rulemaking?

Developing a new regulatory program can be very complicated. It is important that we establish reasonable goals and adopt workable programs to achieve them. We will need to collect reliable information on the costs and benefits of any program. Public participation and input in the rulemaking process is vital to success.

In the rulemaking process, we can either draft proposed regulations ourselves or use negotiated rulemaking to develop the proposals. In negotiated rulemaking, an agency brings together the groups that are interested in or would be affected by proposed regulations. Working together, agency employees and representatives of interested and affected groups negotiate the text of a draft proposed rule.

Whether we draft a proposed rule ourselves, or use negotiated rulemaking, later steps in the rulemaking process would be the same. We would publish any proposed rule in the **Federal Register**, including an analysis of the costs and benefits, and invite the public to submit comments. After reviewing all the comments we receive, we would decide upon what further action to take.

Therefore, we are asking for comments from interested persons regarding the desirability of using a negotiated rulemaking process should we decide to proceed with rulemaking affecting farm-raised fin fish or other aquatic animals.

Authority: 5 U.S.C. 5542; 7 U.S.C. 147b; 21 U.S.C. 111–114a, 114b–114c, 114h, 115, 117–130, 134, 134(a)–134(h), 135a, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 28 day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11130 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM–32–5]

Metabolic Solutions, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated March 5, 1999, filed by Metabolic Solutions, Inc. (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–32–5. The petitioner is requesting that the NRC regulations be amended to extend a regulatory distribution exemption to the petitioner's product, an ''Erythromycin Breath Test.'' That test uses a three-microcurie dose of carbon-14 (C14)-erythromycin to measure the rate of drug metabolism in the human liver. Current NRC regulations permit distribution of radioactive drug capsules that contain one microcurie of C14-urea to persons exempt from licensing. Dose regulations also permit any person exempt from the requirements of a license to use the capsules for diagnostic tests in humans. The petitioner believes that exempting the C14-erythromycin from regulatory control would make the breath test more widely available and reduce the costs of clinical trials without increasing the radiation risk to the public.

DATES: Submit comments by July 20, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: *DLM1@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1997 (62 FR 63634), the NRC published a final rule in the **Federal Register** that permitted the

distribution of radioactive drug capsules that contain one microcurie of carbon-14 (C14)-urea to persons exempt from licensing. The rule added 10 CFR 30.21 entitled, ''Radioactive drug: Capsules containing carbon-14 urea for ''in vivo'' diagnostic use for humans,'' and 10 CFR 32.21 entitled, ''Radioactive drug: Manufacture, preparation, or transfer for commercial distribution of capsules containing carbon-14 urea each for ''in vivo'' diagnostic use for humans to persons exempt from licensing; Requirements for a license.'' The rule became effective on January 2, 1998.

On March 12, 1999, the Nuclear Regulatory Commission received a petition for rulemaking submitted by the petitioner, Metabolic Solutions, Inc., a biomedical firm located in Nashua, New Hampshire. The petitioner requests that the NRC extend the regulatory distribution exemption for one microcurie of C14 urea to include an ''Erythromycin Breath Test'' being developed by the petitioner that contains a three-microcurie dose of C14-erythromycin. To do this, NRC would have to amend its regulations pertaining to the manufacture, distribution, and use of radioactive drugs in 10 CFR Parts 30 and 32.

The breath test is a tool used by researchers and physicians in the clinical study phases of drug research studies. The petitioner states that the erythromycin breath test measures the *in vivo* activity of a liver microsomal cytochrome P450 enzyme, CYP3A4, that metabolizes about 40 to 50% of all drugs in the body. This test is currently used in clinical research studies to help determine the safety of new drugs. Specifically, the test measures the effect that drugs have on the CYP3A4 enzyme system, potential interactions with other co-administered drugs on the enzyme system, and the range of safe drug tolerance within a population. The petitioner believes that dosimetry information for the exempted C14-urea will be very similar to the results for the C14-erythromycin.

According to the petitioner, exempting the C14-erythromycin from ''regulatory control'' would make the breath test more widely available and lower the costs of clinical trials. Also, the petitioner has concluded that the exemption would not present a radiation risk to the general public any higher than the risk associated with the distribution exemption for drug capsules that contain one microcurie of C14-urea. (Note: The Commission has not exempted the C14-urea radioactive drug from ''regulatory control.'' NRC requires the manufacturer and distributor to have an NRC license that authorizes the manufacture or distribution of the product to ''persons exempt'' from licensing under 10 CFR 30.21 or an equivalent regulation of an Agreement State.) The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–32–5. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner believes that the NRC regulations codified at 10 CFR parts 30 and 32 extend a regulatory exemption for drug capsules that contain one microcurie of C–14 urea. According to the petitioner, this exemption should be extended to its erythromycin breath test (ERMBT). In support of this request, the petitioner contends that the dosimetry information for the exempted C14-urea capsules will be very similar to that for the ERMBT. The petitioner has provided supporting documentation for its position (Exhibit A) entitled, ''Dosimetry of C14-Erythromycin.'' Additional supporting documentation (Exhibit B), includes: information related to the trademark, chemical ingredients, pharmacology, clinical safety, contraindications, adverse reactions, dosimetry, drug storage and stability, manufacturing procedures, analysis methodology and quality assurance procedures associated with the ERMBT.

The petitioner explains that ERMBT dosimetry data has not been collected in humans because it predates FDA regulations that govern disposition and metabolism data. In the study cited by the petitioner, dosimetry calculations were based on data collected from intravenous administration of C14-erythromycin in 10 male rats. The study found that in male rats the C14-erythromycin rapidly metabolized in the liver and that the resulting metabolite was excreted in bile. The petitioner indicates that the study also found that most radioactivity resulting from administration of the C14-erythromycin in male rats was either exhaled or excreted. The study also indicated a general distribution of radioactivity in various tissues of male rats after C14-erythromycin administration. The highest concentrations were present in the liver, spleen, pancreas, kidney, adrenal and submaxillary glands, lungs, and intestinal tract. Lower amounts of radioactivity were found in the skin, fat, and brain.

The rat intracellular distribution studies concluded, petitioner states, that erythromycin and its metabolites were capable of entering various cellular components of the liver. The studies also indicated that the C14-erythromycin dose emits beta radiation to exposed individuals. The Oak Ridge Institute for Science and Education, Radiation Dose Information Center Radiation calculated dose estimates for humans administered C14-erythromycin. These estimates are based on data gathered in rats and are described in Appendix 1 of Exhibit A attached to the petition for rulemaking. The petitioner indicates that data was extrapolated to humans using a weight-based extrapolation method where possible.

The petitioner believes that the information presented in Appendix 2 of Exhibit A indicates that the effective dose equivalent from the ERMBT dose (i.e. 2.1 millirem) is comparable to about one-fourth of a chest X-ray and is significantly lower than other nuclear medicine tests. Estimated human organ radiation exposures are presented in Appendix 3 of Exhibit A. The highest calculated organ doses to humans from a three microcurie dosage of C14-erythromycin are 2.8 millirem to the ovaries, 2.3 millirem to the gallbladder, 1.47 millirem to the small intestine, and 0.6 millirem to the urinary bladder wall.

In Exhibit B, the petitioner notes that the ERMBT dose has been administered to patients since 1988 at the University of Michigan Medical Center. Although a few individuals reported a metallic taste in their mouths immediately after ingestion, no adverse reactions have been experienced or reported.

Because the product is used as a research tool, users of the test must receive approval from Investigational Review Boards to administer the ERMBT dose in clinical research studies. The petitioner states that these studies have found that allergic reactions to erythromycin are very rare. The studies also found that gastrointestinal side effects due to the erythromycin, such as abdominal pain, cramping, and mild nausea are the most common adverse reactions and are erythromycin dose related. According to the studies, adverse effects are relatively infrequent in erythromycin doses that contain less than one gram of erythromycin. The petitioner notes that the ERMBT dose contains less than 0.05 milligrams and that no adverse effects have occurred with this dose amount.

According to the petitioner, the ERMBT is currently used only by researchers and physicians who can access a site that has obtained an NRC license to handle radio pharmaceuticals. The petitioner states that it is often inconvenient to use a C14 product. As stated by the petitioner, many clinical

drug studies occur in physicians' offices where there is either a total ban on radioactivity or the facilities do not possess a license to use radioactive substances. The petitioner contends that the market size for the ERMBT is much smaller than that of the exempted urea test. Estimates by the petitioner are that less than 10,000 patients would receive the ERMBT between two to five times in clinical studies each year (less than 100,000 tests). The petitioner states that the C14-urea test encompassed 600,000 people who could be tested two or three times including diagnosis and follow-up testing. Without a regulatory exemption, the petitioner believes that the market size would be too small to be economically feasible to pursue FDA approval for the use of the ERMBT.

The Petitioner's Conclusions

The petitioner concludes that dosimetry information of the C14-erythromycin will be very similar to that of the exempted C14-urea. Also, the petitioner concludes that exempting the C14-erythromycin from regulatory control will make the ERMBT more widely available and reduce clinical trial expenses. Lastly, the petitioner concludes that the exemption would not present a radiation risk to the general public any higher than the risk associated with the distribution exemption for drug capsules that contain one microcurie of C14-urea.

The petitioner requests that the NRC grant a regulatory distribution exemption for the ERMBT similar to the current exemption for C14-urea capsules. This would require amending the regulations pertaining to use of radioactive drugs in 10 CFR Parts 30 and 32.

Dated at Rockville, Maryland, this 28th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11110 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Health Services Industries

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase the size standards for eleven of the nineteen industries under Standard Industrial Classification (SIC) Major Group 80, Health Services. The current size standard is $5 million in average annual receipts for all health services industries. Depending on the industry, the proposed size standards are $7.5 million, $10 million, or $25 million. The proposed revisions are being made to better define the size of business in those industries that the SBA believes should be eligible for Federal small business assistance programs.

DATES: Submit comments on or before July 6, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6880, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA has historically applied a common size standard for all industries under SIC Major Group 80, Health Services. The current size standard of $5 million for all nineteen SIC codes in this major group was established on April 22, 1994 (58 FR 16513), at which time it was increased from $3.5 million. In response to requests from Federal agencies and small businesses, the SBA analyzed the size standards for the health services industries and, on the basis of that review, believes that size standards higher than $5 million should be established for eleven of the nineteen SIC codes in the health services industries. The table below lists the health services industries for which the SBA is proposing revised size standards:

SIC Code	Industry	Proposed size standard (millions of dollars)
8011	Offices and Clinics of Doctors of Medicine	$7.5
8051	Skilled Nursing Care Facilities	10.0
8052	Intermediate Care Facilities	7.5
8062	General Medical and Surgical Hospitals	25.0
8063	Psychiatric Hospitals	25.0
8069	Specialty Hospitals, Except Psychiatric	25.0
8071	Medical Laboratories	10.0
8082	Home Health Care Services	10.0
8092	Kidney Dialysis Centers	25.0
8093	Specialty Outpatient Facilities, N.E.C	7.5
8099	Health and Allied Services, N.E.C.	7.5

For the following eight health services industries, the SBA believes the current $5 million is appropriate:

SIC Code	Industry	Size standard (millions of dollars)
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	5.0
8041	Offices and Clinics of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0
8043	Offices and Clinics of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	5.0
8059	Nursing and Personal Care Facilities, N.E.C.	5.0
8072	Dental Laboratories	5.0

Below is a discussion of the SBA's size standards methodology and the analyses leading to the proposed size standards. As part of this discussion, the SBA will explain why it has decided to retain the $5 million size standard for eight of the health services industries. SBA also discusses its analysis to determine whether any firm under a proposed size standard would be considered dominant within an industry. This is followed by a discussion of an alternative size standard approach considered by SBA.

Size Standards Methodology

In considering the appropriateness of a size standard the SBA evaluates the structural characteristics of an industry and the participation of small businesses in SBA programs. For the analysis of the size standards for the health services industries, five evaluation factors describing the structural characteristics of an industry and small business participation in SBA programs were assessed. These evaluation factors were: (1) Average firm size, (2) distribution of firms by size, (3) start-up costs, (4) industry competition, and (5) the competition for Federal procurements. The SBA generally considers these five to be the most important evaluation factors in establishing or revising a size standard for an industry. It will consider and evaluate other information shown to be relevant to the decision on the size standard. Below is a brief description of the five evaluation factors.

1. Average firm size is total industry revenues (or number of employees) divided by the total number of firms operating in the industry. If an industry has an average firm size significantly higher than the average firm size of a group of comparative industries (in this case, industries with the anchor size standard of $5 million in revenues), this fact may support establishing a higher size standard than the one in effect for the group of related industries. Conversely, data showing an industry with a lower average firm size relative to the related group of industries tends to support a lower size standard.

2. The distribution of firms by size examines the proportion of industry sales, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's output is by smaller firms, this may support a low size standard. The opposite is the case for an industry in which the distribution of firms indicates that output is concentrated among the largest firms in an industry.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start a viable business. To the extent that firms in an industry have greater start-up capital requirements than firms in other industries, the SBA is justified in considering a higher size standard. As a proxy measure for start-up costs, SBA examines the average level of assets for firms in an industry. An industry with a relatively high level of average assets per firm as compared with the average assets per firm of the group of comparative industries with $5 million size standards is likely to be a capital intensive industry in which start-up costs tend to be higher for firms entering the industry. For those types of industries, that circumstance may support the need for a relatively high size standard.

4. The SBA assesses industry competition by measuring the proportion or share of industry sales obtained by firms above a relatively large firm size. In this proposed rule, SBA analyzes the proportion of industry sales generated by the four largest firms in an industry—generally referred to as the ''four-firm concentration ratio.'' If a significant proportion of economic activity within an industry is concentrated among a few relatively large producers, SBA tends to set a higher size standard to assist firms in a broader size range to compete with firms that are clearly dominant in the industry.

5. Competition for Federal procurements. The SBA also evaluates the impact of a size standard on its programs and other applications of size standards to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment mainly focuses on the proportion or share of Federal contract dollars awarded to small businesses. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one. As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining loans in its financial assistance plans is sometimes assessed to determine whether the current size standard may inappropriately restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, a change to the size standard may not be appropriate. Since the SBA reviewed the health services size standards primarily because of the concerns about the application of the size standard to Federal procurement, the proposed rule reviews Federal contract awards to small businesses to assess the program impact of proposed size standards.

The SBA has established ''anchor'' size standards of 500 employees for the manufacturing and mining industries and $5 million for the nonmanufacturing industries. If the structural characteristics of an industry are significantly different from the average characteristics of industries with the anchor size standard, a size standard higher or lower than the anchor size standard may be supportable. For the industries under review in this proposed rule, the SBA compares the characteristics of the five evaluation factors for each industry to the average characteristics of the nonmanufacturing industries which have the anchor size standard of $5 million (hereafter referred to as the nonmanufacturing anchor group). If the characteristics of an industry are similar to the average characteristics of the nonmanufacturing anchor group, then the anchor size standard of $5 million is considered an appropriate size standard for that industry. If, however, the industry characteristics significantly differ from the average characteristics of the nonmanufacturing anchor group, then a size standard above or below $5 million may be appropriate.

Evaluation of Industry Size Standards

The SBA analyzed the size standards for the health services industries by comparing their industry characteristics to the average characteristics of the nonmanufacturing anchor group. A review of these factors leads to a recommended size standard for each industry. The five tables below show the characteristics for each industry and for the nonmanufacturing anchor group. SBA examined economic data on these industries from a special tabulation of the 1992 Economic Census prepared on contract by the U.S. Bureau of the Census, asset data from Dun and Bradstreet's 1998 Industry Norms and Key Business Ratios, and Federal contract award data for fiscal years 1996 and 1997 from the Federal Procurement Data Center.

Offices and Clinics of Health Practitioners (SIC Codes 8011–8049):

The SBA is retaining the $5 million size standard for six (SIC codes 8021, 8031, 8041, 8042, 8043, 8049) of the seven industries comprising offices and clinics of health practitioners. For the

seventh industry, Offices and Clinics of Doctors of Medicine (SIC code 8011), the SBA proposes a $7.5 million size standard. Table 1 shows the characteristics of these seven industries.

TABLE 1.—INDUSTRY CHARACTERISTICS OF OFFICES AND CLINICS OF HEALTH PRACTITIONERS AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procure-ment dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Doctors of Medicine (8011)	0.83	67.7	75.3	81.3	0.3	5.2	9.4
Dentists (8021)	0.34	98.3	99.1	99.7	0.1	0.3	77.3
Doctors of Osteopathy (8031)	0.44	97.0	99.1	99.2	0.3	0.8	(*)
Chiropractors (8041)	0.22	99.6	99.9	99.9	0.1	0.4	(*)
Optometrists (8042)	0.32	95.5	97.6	99.9	0.1	1.2	(*)
Podiatrists (8043)	0.26	99.2	99.9	99.9	0.2	1.0	(*)
Health Practitioners, N.E.C. (8049)	0.30	90.3	94.8	96.5	0.1	1.2	75.6

NA = not available.
*Insignificant amount of Federal contracting.

Except for Offices and Clinics of Doctors of Medicine (SIC 8011), the characteristics of each of the industries of Offices and Clinics of Health Practitioners provide no basis for a higher size standard than $5 million. Specifically, the average firm size of these industries is significantly below the average firm size of the nonmanufacturing anchor group. The percent of industry sales by firms of $5 million and less, $10 million and less, and $25 million and less shows that small firms dominate these industries. The low four-firm concentration ratios also indicate that small businesses are highly competitive in these industries. For the two industries that have a significant amount of Federal contracting activity, Offices and Clinics of Dentists and Health Practitioners Not Elsewhere Classified (SIC codes 8021 and 8049), small clinics and offices received more than three-fourths of the dollar value of Federal contracts, which also indicates no need for a change to the current size standards. The Federal procurement competition factor was not evaluated for the other four industries since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement.

A $7.5 million size standard is proposed for the industry of Offices and Clinics of Doctors of Medicine (SIC code 8011). Four of the five evaluation factors are similar to the average characteristics of the nonmanufacturing anchor group and do not support a change to the current size standard. However, the share of Federal contracts awarded to small Offices and Clinics of Doctors of Medicine, supports an increase to the current size standard. Small Offices and Clinics of Doctors of Medicine received only 9.4 percent of the dollar value of Federal contracts awarded during fiscal years 1996–97. A review of Federal contract awards for the services of medical doctors reveals a significant amount of contract awards to non-business entities and institutional providers such as Native American tribes, educational institutions, and hospitals. The large discrepancy between the participation of small businesses in the Federal market versus the share of total industry revenues obtained by small Offices and Clinics of Doctors of Medicine occurs because of the non-business and institutional providers competing for and obtaining Federal contracts for physician care. To strengthen the abilities of these small businesses to compete with these other types of providers, the SBA proposes a $7.5 million size standard. This should allow existing small businesses to grow to a more substantial size without losing their small business status. The SBA expects that a size standard moderately higher than the current size standard will help small firms in this industry to compete for Federal contracts without including businesses so large that they could harm the opportunities of much smaller-sized small businesses to compete successfully for Federal contracts.

Nursing and Personal Care Facilities (SIC Codes 8051, 8052, and 8059)

The three industries comprising nursing and personal care facilities display sufficiently different industry characteristics to warrant different size standards. Table 2 shows the industry characteristics. A discussion of the size standard for each industry follows.

TABLE 2.—INDUSTRY CHARACTERISTICS OF NURSING AND PERSONAL CARE FACILITIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Skilled Nursing Care Facilities (8051)	5.57	25.8	42.7	57.3	4.2	11.9	29.1
Intermediate Care Facilities (8052)	2.36	46.8	61.3	76.8	2.1	6.7	30.8

TABLE 2.—INDUSTRY CHARACTERISTICS OF NURSING AND PERSONAL CARE FACILITIES AND THE NONMANUFACTURING ANCHOR GROUP—Continued

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nursing and Personal Care Facilities, N.E.C. (8059)	1.04	52.8	70.6	82.8	0.7	5.9	25.8

NA = not available.

The characteristics of Skilled Nursing Facilities (SIC code 8051) support a size standard of $10 million. Four of the five evaluation factors—average firm size, average assets per firm, distribution of sales by firm size, and competition in Federal procurement—support a size standard higher than $5 million. Average firm size is over six times higher than the average firm size of the nonmanufacturing anchor group, indicating that a size standard among SBA's highest receipts-based size standards ($20 million to $25 million) may be appropriate for this industry. Similarly, average assets per firm are more than eight times higher than that of the nonmanufacturing anchor group, and supports the highest receipts-based size standard. The distribution of sales by firm size supports a size standard higher than $5 million, but much lower than $25 million. The level of small business participation in Federal contracting (29.1 percent) also supports a small increase to the size standard. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million. Although two factors support a very high receipts-based size standard, that level would not be a reasonable size standard since businesses with sales of $25 million or less capture well over half of total industry sales. In consideration of these factors taken together, the SBA proposes a $10 million size standard for this industry.

The characteristics of the Intermediate Care Facilities industry (SIC code 8052) support a size standard of $7.5 million. The average size firm in this industry is over twice the nonmanufacturing anchor group average and supports a size standard about twice the $5 million anchor size standard. Average assets per firm is over four times the average for the nonmanufacturing group and supports a size standard among SBA's highest receipts-based size standards ($20 million to $25 million). The distribution of sales by firms in this industry supports a size standard at the anchor size standard of $5 million. The four firm concentration ratio supports a size standard no higher than $5 million. The difference between the level of small business participation in Federal contracting (30.8 percent) and the share of total industry revenues obtained by small businesses also indicates that a small increase to the size standard is appropriate to better take into consideration Federal contracting patterns. In consideration of each of these factors taken together, the SBA is proposing a $7.5 million size standard for this industry.

The SBA is retaining the $5 million size standard for the industry of Nursing and Personal Care Facilities, Not Elsewhere Classified (SIC code 8059). None of the industry factors reviewed support a size standard above the $5 million since they are similar to those of the nonmanufacturing anchor group. A small increase to the size standard could be supported based on the percentage of Federal contracting dollars obtained by small business (25.8 percent). However, without any of the four evaluation factors pertaining to industry-wide characteristics also supporting an increase to the size standard, the SBA is reluctant to increase a size standard above its current level based solely on the small business share of Federal contract dollars of an industry unless that share were significantly below the overall Federal small business share of 21 percent. Here, small businesses received about a quarter of Federal contract dollars in fiscal years 1996 and 1997.

Hospitals (SIC Codes 8062, 8063, and 8069)

The SBA proposes a $25 million size standard for each of the three hospital industries—General Medical and Surgical Hospitals (SIC code 8062), Psychiatric Hospitals (SIC code 8063) and Specialty Hospitals (SIC code 8069). The industry data in Table 3 show that these industries are comprised predominately of large businesses, in which the average firm size and average asset size per firms are in the multimillion dollar levels and small hospitals under the $5 million size standard account for one percent or less of industry revenues. Further, the low percentage of Federal contract dollars to small General and Surgical Hospitals (3.5 percent) supports a significant increase to the size standard for this industry. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million; however, the unique structure of the hospital industries renders this factor inconsequential. Accordingly, the SBA considers its highest receipts-based size standard of $25 million appropriate for the three hospital industries.

TABLE 3.—INDUSTRY CHARACTERISTICS OF HOSPITALS AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
General Medical and Surgical Hospitals (8062)	83.99	0.4	1.3	4.8	89.0	5.8	3.5
Psychiatric Hospitals (8063)	27.61	1.0	4.4	20.9	21.0	16.5	(*)

TABLE 3.—INDUSTRY CHARACTERISTICS OF HOSPITALS AND THE NONMANUFACTURING ANCHOR GROUP—Continued

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Specialty Hospitals, Except Psychiatric (8069)	40.76	0.9	2.8	11.2	44.8	5.2	(*)

NA = not available.
* Insignificant amount of Federal contracting.

Medical and Dental Laboratories (SIC Codes 8071 and 8072)

The Medical Laboratory Industry (SIC code 8071) has significantly different characteristics from the Dental Laboratory Industry (SIC code 8072). These differing characteristics support different size standards for these two industries. Table 4 shows the characteristics of these two industries. The average size firm and average assets per firm of Medical Laboratories are two times or more than the nonmanufacturing anchor group averages, and therefore, supports a twice the anchor size standard of $5 million. The distribution of sales by firm size in this industry and the relatively low percent of the dollar value of Federal Government contract awards to small businesses support a size standard moderately above $5 million. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million. In consideration of these factors, the SBA proposes a $10 million size standard for this industry. The $5 million size standard is being retained for Dental Laboratories. None of the four of the evaluation factors related to industry structure support a size standard above $5 million, since the characteristics are below those of the nonmanufacturing anchor group for each factor. The Federal procurement competition factor was not evaluated for this industry because the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement.

TABLE 4.—INDUSTRY CHARACTERISTICS OF MEDICAL AND DENTAL LABORATORIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Medical Laboratories (8071)	2.01	29.7	38.4	NA	1.0	26.5	18.3
Dental Laboratories (8072)	0.26	91.2	95.3	99.9	0.1	4.7	(*)

NA = not available.
* Insignificant amount of Federal contracting.

Miscellaneous Health & Allied Services, Not Elsewhere Classified (SIC Codes, 8082, 8092, 8093 and 8099)

The four miscellaneous health and allied services industries display differing characteristics. Table 5 shows the characteristics of these four industries. A discussion of the size standard for each industry follows.

TABLE 5.—INDUSTRY CHARACTERISTICS OF THE MISCELLANEOUS HEALTH & ALLIED SERVICES (NOT ELSEWHERE CLASSIFIED) INDUSTRIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Home Health Care Services (8082)	2.55	27.4	36.7	52.4	0.9	13.9	(*)
Kidney Dialysis Centers (8092)	5.59	23.5	30.1	3.75	4.3	46.6	(*)
Specialty Outpatient Facilities, N.E.C. (8093)	1.24	50.6	67.5	78.7	0.8	2.9	4.3
Health and Allied Services N.E.C. (8099)	1.28	37.7	48.8	67.1	0.7	9.1	7.6

NA=not available.
*Insignificant amount of Federal contracting.

Two factors support a size standard higher than $5 million for the Home Health Care Services industry. The average size firm in this industry is three times the nonmanufacturing anchor group average and supports a size standard about double the anchor size standard. Also, the distribution of sales by firm size in this industry and the average assets per firm support a size standard about twice the anchor size standard. Average assets per firm and the four firm concentration ratio do not support a size standard above $5 million. The Federal procurement competition factor was not evaluated for this industry since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement. In consideration of these evaluation factors, the SBA is proposing a $10 million size standard for this industry.

The SBA proposes a size standard of $25 million for Kidney Dialysis Centers (SIC code 8092). All four industry structure factors support establishing a size standard at or near the SBA's highest receipts-based size standard ($25 million). Average firm size and average assets per firm are between six to eight times the average of the nonmanufacturing anchor group. The concentration ratio shows that almost half of industry sales are by the four largest firms in the industry; and the distribution of sales by firm size shows that smaller firms in the industry account for less than one-third of total industry sales. The Federal procurement competition factor was not evaluated for this industry since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement. Accordingly, the SBA is proposing a $25 million size standard for this industry.

SBA proposes a $7.5 million size standard for Specialty Outpatient Facilities (SIC 8093) and for Health and Allied Services, Not Elsewhere Classified (SIC code 8099). Four of the evaluation factors do not support a higher size standard than $5 million since their levels are similar to those of the nonmanufacturing anchor group averages. However, the Federal procurement competition factor strongly supports a higher size standard for these two industries. During fiscal years 1996–97, small businesses in the industries of Specialty Outpatient Facilities and Health and Allied Services, Not Elsewhere Classified, received only 4.3 percent and 7.6 percent, respectively, of total dollar value of Federal contract awards. A review of Federal contract awards in these two industries shows that a significant amount of Federal contracts were awarded to non-business entities and institutional providers (Native American tribes, educational institutions, and hospitals). The large discrepancy between the share of Federal contracts awarded to small businesses and the share of total industry revenues obtained by small businesses may be attributed primarily to non-business and institutional providers competing for and obtaining Federal contracts under these two SIC codes. As with the proposed size standard for Offices and Clinics of Doctors of Medicine, the SBA believes that a higher size standard will strengthen small businesses by allowing them to become more competitive and to grow to a more substantial size without losing small business status. The SBA expects that a size standard moderately higher than the current size standard will help small businesses to compete for Federal contracts without harming smaller-size small businesses which also compete for Federal contracts.

Dominant in Field of Operation

Section 3(a) of the Small Business Act defines a small concern as one that is: (1) Independently owned and operated, (2) not dominant in its field of operation, and (3) within detailed definitions or size standards established by the SBA Administrator. The SBA considers as part of its evaluation of a size standard whether a business concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at a proposed size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standards for each of the health services industries would be of a sufficient size to dominate its field of operation. The largest firm at the proposed size standard level generates less than 0.11 percent of total industry sales in every industry with a proposed size standard revision. This level of market share effectively precludes any ability for a firm to exert a controlling effect on an industry.

Alternative Size Standards

The SBA considered as an alternative size standard retaining a common size standard for all nineteen health services under Major Group 80. As the industry evaluations show, significant differences exist among the structures of the various health services industries. The SBA believes that these differences are significant, and warrant different size standards for these industries. These differences are especially apparent for the industries in the Hospitals and Miscellaneous Health and Allied Services (Not Elsewhere Classified) industry groups. Thus, a common size standard for all nineteen industries would not adequately identify all small businesses engaged in a variety of health services.

The SBA welcomes public comments on its proposed size standards for the health services industries. Comments on alternatives to the proposal, including the common size standard discussed above, should present the reasons that make them preferable to the proposed size standards.

The SBA is particularly interested in comments on the proposed $7.5 million size standards for the Offices and Clinics of Doctors of Medicine (SIC 8011), Specialty Outpatient Facilities (SIC 8093) and Health and Allied Services, Not Elsewhere Classified (SIC 8099). As discussed above, the SBA proposal to increase size standards for these industries is based on existing small business participation in Federal contracting. Comments are welcome on this single factor providing a sufficient basis for increasing these industries' size standards. A related question concerns whether the proposal to increase size standards in these industries will be effective. If the size standards are increased, would small businesses in these industries have more opportunities in the Federal procurement market or are there other factors, such as the types of health services the Federal Government purchases, that would continue to prevent small businesses from getting a larger proportion of Federal contracts? In addition, if the size standards are increased will the smallest firms be able to compete effectively for Federal contracts? Another related concern is that the proposed size standards for these industries would also be used for other program purposes (e.g., regulatory flexibility analyses as performed for regulatory actions, state and local procurement programs, and SBA financial assistance programs), not just for defining a small business for Federal procurement programs. For those industries where Federal procurement has influenced our selection of a size standard, is the proposed size standard still considered reasonable for other

program uses or would it be inappropriate for other applications? These are important issues in which SBA would appreciate comments.

SBA is also concerned whether different business relationships in the Health Services Industries, such as networks and alliances, have any implications for its small business size standards. In calculating the size of a firm, a firm must include the revenues of all its affiliates. Affiliation is defined in 13 CFR 121.103 and basically means that any firm that controls or has the power to control another is considered an affiliate. Is SBA's definition of affiliation still adequate under these new and varied arrangements? If not, how should SBA treat these arrangements to ensure a workable small business size standard?

Finally, SBA notes that small businesses in the Health Services Industries receive a substantial portion of their revenues from Medicare and Medicaid reimbursement payments. SBA has proposed size standards based on an analysis of industry data from all sources of revenues (which includes Medicare and Medicaid revenues as well as all other sources of revenues), and for some industries, on how small businesses have performed in the Federal market. However, as explained above, competition for Federal procurements was not evaluated for several industries because the amount of total Federal contract dollars awarded within an industry was ''insufficient to draw any meaningful conclusions on the effect of the size standard on small business participation in Federal procurement.'' However, in these cases there may have been significant Medicare/Medicaid revenues. For three industries, the proposed size standard was based solely on the basis of competition for Federal procurements. Since Medicare and Medicaid expenditures comprise a large proportion of industry revenues, should SBA consider the distribution of these types of revenues to small businesses in evaluating size standards for the Health Services Industries? If so, in what ways should Medicare and Medicare revenues affect size standards and what data exist that SBA could use to evaluate different size standards? Also, are there any other aspects of the Medicare and Medicaid programs pertaining to small businesses that should influence SBA's assessment of the Health Services size standards? If so, how and what are the implications on these size standards?

Compliance With Executive Orders 12612, 12788, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–12), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The SBA certifies that this rule, if adopted, would be a significant rule within the meaning of Executive Order 12866. Immediately below, the SBA sets forth the analysis required by E.O. 12866 and the Regulatory Flexibility Act for this proposed rule.

(1) Description of Entities to Which the Rule Applies

The SBA estimates that 4,700 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided that they meet other program requirements. Of the additional firms gaining eligibility, more than half would be Offices and Clinics of Doctors of Medicine, and Skilled Nursing Care Facilities. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate more than $50 billion in annual sales; total sales in all eleven industries receiving a size standards increase are $540 billion.

(2) Description of Potential Benefits of the Rule

The most significant benefits to businesses that would obtain small business status as a result of adoption of this rule are: (1) Eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses and small businesses located in Historically Underutilized Business Zones; and (2) eligibility for SBA's financial assistance programs. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $220 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents approximately seven percent of the $3.2 billion the Federal Government awarded in these eleven health services industries during fiscal year 1997. The added competition for many of these procurements also would likely result in a lower price to the government for procurements set aside for small businesses, but the SBA is not able to quantify this benefit. Under the SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that $4 million in new loans could be made to these newly defined small businesses. During fiscal year 1997, SBA guaranteed $683 million in loans to these two financial programs for firms in the health services industries. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. For example, more than 95 percent of the 1997 loans were made to firms with less than $3.5 million in revenues. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in these health services industries.

(3) Description of Potential Costs of the Rule

The changes in size standards as they affect Federal procurement is not expected to add any significant costs to the Government. As a matter of policy, procurements may be set aside for small business or under the 8(a) program only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation, and mergers. The change to size standards is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contracting opportunities available under these programs. The new size standards, if adopted, would not impose a regulatory burden because they do not regulate or control business behavior.

(4) Description of the Potential Net Benefits From the Rule

Based on the above discussion, the SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would be approximately equal to the total potential benefits. Most of the impact of this rule will be on Federal procurement.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of Rule

The SBA has provided in the supplementary information a statement of the reasons why these new size standards should be established and a statement of the reasons for and objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, the SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 12612, the SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, SBA proposed to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 et. seq., 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Amend (121.201, in the table ''Size Standards by SIC Industry'', under the heading DIVISION I—SERVICES, to add the following entries after ''7822 Motion Picture and Video Tape Production'' to read as follows:

8011	Offices and Clinics of Doctors of Medicine	$7.5
8051	Skilled Nursing Care Facilities	10.0
8052	Intermediate Care Facilities	7.5
8062	General Medical and Surgical Hospitals	25.0
8063	Psychiatric Hospitals	25.0
8069	Specialty Hospitals, Except Psychiatric	25.0
8071	Medical Laboratories	10.0
8082	Home Health Care Services	10.0
8092	Kidney Dialysis Centers	25.0
8093	Specialty Outpatient Facilities, N.E.C	7.5
8099	Health and Allied Services, N.E.C	7.5

Dated: April 28, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–11080 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–25]

Proposed Modification of the Legal Description of the Class D Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the legal description of the Class D airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class C airspace designation is being revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport will be established (Airspace Docket No. 93–AWA–5, final rule published in the **Federal Register** on November 30, 1998, 63 FR 65972, effective date delayed on December 14, 1998, 63 FR 68675, and confirmation of effective date on April 12, 1999, 64 FR 17934). The reference to Class C airspace in the legal description for the Class D airspace at Cincinnati Municipal Airport Lunken Field will be invalid, and this action changes that reference to Class B airspace.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the legal description of the Class D airspace at Cincinnati, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class D airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH

(Lat. 39° 06′ 12″N., long. 84° 25′ 07″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of the Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11175 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–27]

Proposed Establishment of Class E Airspace; Gwinn, MI; Proposed Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Gwinn, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Class E airspace for Sawyer Airport has been changed from Sawyer, MI, to Gwinn, MI, and the legal description for Class E airspace for K.I. Sawyer, MI, is not longer valid because K.I. Sawyer Air Force Base (AFB) has been closed and renamed Sawyer Airport. This action proposes to establish Class E airspace for Gwinn, MI, to correctly describe the Class E airspace required for Sawyer Airport, and to revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–27.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the

proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Gwinn, MI, and by revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Sawyer Airport has changed from Sawyer, MI, to Gwinn, MI, and K.I. Sawyer AFB has been closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Sawyer, MI [Removed]

* * * * *

AGL MI E2 Gwinn, MI [New]

Gwinn, Sawyer Airport, MI
(Lat. 46°21′13″ N., long. 87°23′45″ W.)
Within a 4.6-mile radius of Sawyer Airport.

* * * * *

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

* * * * *

AGL MI E5 Sawyer, MI [Removed]

* * * * *

AGL MI E5 K.I. Sawyer, MI [Removed]

* * * * *

AGL MI E5 Gwinn, MI [New]

Gwinn, Sawyer Airport, MI
(Lat. 46°21′13″ N., long. 87°23′45″ W.)
That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer Airport, excluding that airspace within the Marquette, MI, Class E airspace area, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer Airport.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,
Manager, Air Traffic Division.

[FR Doc. 99–11176 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–7]

Proposed Amendment of Class E Airspace; Sanford, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Sanford, NC. The Sanford-Lee County Brick Field Airport has been relocated approximately 10 miles northeast and the name of the airport has been changed to Sanford-Lee County Regional Airport. An Instrument Landing System (ILS)/Distance Measuring Equipment (DME) Runway (RWY) 3 Standard Instrument Approach Procedure (SIAP) has been developed for Sanford-Lee County Regional Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Sanford-Lee County Regional Airport.

DATES: Comments must be received on or before June 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–7, Manager, Airspace Branch, ASO–4520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Sanford, NC. The Sanford-Lee County Brick Field Airport has been relocated approximately 10 miles northeast and the name of the airport has been changed to Sanford-Lee County Regional Airport. An ILS/DME RWY 3 SIAP has been developed for Sanford-Lee County Regional Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Sanford-Lee County Regional Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Sanford, NC [Revised]

Sanford-Lee County Regional Airport, NC
(Lat. 35°34′57″N, long. 79°06′05″W)

That airspace extending upward from 700 feet or more above the surface within a 6.6-mile radius of Sanford-Lee County Regional Airport.

* * * * *

Issued in College Park, Georgia, on April 20, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–11172 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–24]

Proosed Modification of Class E Airspace; Barnesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Barnesville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Barnesville-Bradford Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–24.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Barnesville, OH, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Barnesville-Bradford Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

Authority: 40 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

AGL OH E5 Barnesville, OH [Revised]

Barnesville-Bradford Airport OH
(Lat. 40°00′09″ N., long. 81°11′31″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4 mile radius of Barnesville-Bradford Airport.

* * * * *

Issued in Des Plaines, Illinois on April 14, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11173 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–26]

Proposed Modification of Class E Airspace; Indianapolis, IN; and Proposed Revocation of Class E Airspace; Greenwood, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Indianapolis, IN, and revoke the Class E airspace at Greenwood, IN. The legal description for the Class E airspace for the Greenwood Municipal Airport has been published in duplicate, once as part of the Indianapolis, IN, Class E airspace, and once as Greenwood, IN, Class E airspace. Neither legal description for the Class E airspace for the Greenwood Municipal Airport, as published, is correct. Because the Class E airspace for Greenwood Municipal Airport is an integral part of the Indianapolis, IN, Class E airspace area, this action proposes to modify the Class E airspace for Indianapolis, IN, to correctly describe the Class E airspace required for Greenwood Municipal

Airport, and by revoking the duplicate, and therefore unneeded, Class E airspace at Greenwood, IN.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–26, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–26.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace at Indianapolis, IN, by correctly describing the Class E airspace for the Indianapolis, Greenwood Municipal Airport and by revoking the duplicate incorrect Class E airspace at Greenwood, IN. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL IN E5 Greenwood, IN [Removed]

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis International Airport, IN
(Lat. 39° 43′ 02″N., long. 86° 17′ 40″W.)
Indianapolis, Greenwood Municipal Airport, IN
(Lat. 39° 37′ 42″N., long. 86° 05′ 16″W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49′ 51″N., long. 86° 17′ 40″W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39° 42′ 12″N., long. 86° 06′ 28″W.)
Brickyard VORTAC
(Lat. 39° 48′ 53″N., long. 86° 22′ 03″W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Indianapolis International Airport, within a 7.0-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7.0 miles west of the VORTAC, and within a 6.0-mile radius of the Point in Space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11174 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 98N–1170]

Medical Devices; Sunlamp Products Performance Standard; Request for Comments and Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 9, 1999, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of February 9, 1999 (64 FR 6288). That ANPRM announced FDA's intention to propose amendments to the performance standard for sunlamp products. The agency is taking this action in response to a request for extension of the comment period. This extension of the comment period is intended to allow interested persons additional time to submit comments on the ANPRM.

DATES: Written comments by July 9, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Individuals or organizations wishing to receive copies of draft amendments or related documents distributed for review during the development of these amendments may have their names placed on a mailing list by writing to the Office of Science and Technology (HFZ–114), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–594–6775, e-mail ''HWC@CDRH.FDA.GOV''.

FOR FURTHER INFORMATION CONTACT: W. Howard Cyr, Center for Devices and Radiological Health (HFZ–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7179.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of February 9, 1999 (64 FR 6288), FDA published an ANPRM to propose amendments to the performance standard for sunlamp products. FDA is soliciting comments and information from interested persons concerning the adequacy of the warnings on sunlamp products, current recommended exposure schedule to minimize risk to customers who choose to produce and maintain a tan, current labeling for replacement lamps, and current health warnings which do not reflect recent advances in photobiological research.

FDA received a request from an association of tanning facilities owners to extend the comment period an additional 90 days to allow adequate time to respond. In response to the letter, FDA is extending the comment period for 60 additional days.

II. Comments

Interested persons may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. 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.

Dated: April 26, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–11121 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, and 40

[REG–100729–98]

RIN 1545–AW41

Electronic Funds Transfers of Federal Deposits; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the deposits of Federal taxes by electronic funds transfer.

DATES: The public hearing originally scheduled for Tuesday, May 11, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, and notice of public hearing that appeared in the **Federal Register** on Tuesday, March 23, 1999 (64 FR 13940), announced that a public hearing was scheduled for Tuesday, May 11, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6302 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, May 24, 1999. The outlines of topics to be addressed at the hearing were due on Tuesday, April 20, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 28, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, May 11, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–11068 Filed 5–3–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation and Enforcement

30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846

RIN 1029–AB94

Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening and extending the comment period for the proposed rule published on December 21, 1998 (63 FR 70580). The comment period originally closed

on February 19, 1999, and was then extended to April 15, 1999 (64 FR 15322; March 31, 1999). We are again reopening and extending the comment period for an additional 5 days.

DATES: We will accept written comments on the proposed rule until 5 p.m. Eastern time, on May 10, 1999.

ADDRESSES: You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2796 or (800) 643–9748. E-Mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION: In order to accept comments from members of the public received shortly after the close of the comment period, we are reopening and extending the public comment period for the proposed rule published on December 21, 1998 (63 FR 70580). We are extending the comment period an additional 5 days.

In the rule, we are proposing revised permit eligibility requirements for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In particular, we propose to revise how ownership and control of mining operations is determined under section 510(c) of SMCRA so that applicants who are responsible for unabated violations do not receive new permits. We have designed this proposal to be effective, fair, and consistent with a 1997 decision by the U.S. Court of Appeals for the DC Circuit addressing ownership and control issues.

Dated: April 28, 1999.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 99–11125 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ07

Medication Prescribing Authority

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the medical regulations of the Department of Veterans Affairs (VA) regarding patient rights concerning the prescribing of medications. The current regulations were intended to ensure that patients are free of unnecessary medications, that a patient's medical record contains entries reflecting prescribed medications, that drug regimens are reviewed in a timely manner, and that medications not be used as punishment. The adoption of this proposed rule would not lessen these requirements. However, the regulations noted that medication would be administered only on the written order of a physician. Further, the regulations provided for medication review only by a physician. Today, throughout the health care industry other health care professionals are recognized as qualified and credentialed to prescribe medications and conduct medication reviews. Under these circumstances, VA proposes to update the regulations by stating that other health care professionals also are able to prescribe medications as authorized by VA and to conduct the necessary medication reviews. Further, in order to utilize technological advances, VA proposes to amend the regulations to allow for VA health care professionals to issue prescriptions by electronic means in addition to ordering prescriptions by telephone.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AJ07.'' All written comments received will be available for public inspection at the above address, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ronald J. Gebhart, M.D., Chief Consultant, Primary and Ambulatory Care (112), Veterans Health Administration, 202–273–8550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that adoption of the proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule concerns which VA health care professionals may prescribe medications. It would not have an affect on small entities and is not intended to affect the prescription of medications to veterans. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: January 5, 1999

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below.

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 USC 501, 1721, unless otherwise noted.

2. In 17.33, paragraph (e) is revised to read as follows:

17.33 Patients' rights.

* * * * *

(e) *Medication*. Patients have a right to be free from unnecessary or excessive medication. Medication will be administered only on the order of a healthcare professional authorized by VA to prescribe medication. That individual may issue the order personally, or in the case of an emergency, by telephone or other electronic means. If made personally, the healthcare professional must issue the order in writing by placing an entry in the patient's medical record. If the order is issued by telephone or other electronic means, the person receiving the order must place an entry in the patient's medical record showing that the order was made, and it must be countersigned within 24 hours by a healthcare professional authorized by VA to prescribe medication. The

attending healthcare provider shall be responsible for all medication given or administered to a patient. The attending healthcare provider shall review the drug regimen of each patient under his or her care at least every thirty (30) days, and the administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, or for the convenience of the staff, or in quantitites which interfere with the patient's treatment program.

* * * * *

[FR Doc. 99–11070 Filed 5–3–99; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038–100b; FRL–6333–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from paper, fabric, and film coating operations; graphic arts, coatings and ink manufacturing; plastic, rubber, and glass coatings; motor vehicle and mobile equipment non-assembly line coating operations; and solvent cleaning operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 3, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations, submitted to EPA on July 23, 1996 (1128, 1130), September 14, 1992 (1141.1), August 1, 1997 (1145), and March 10, 1998 (1151, 1171) by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

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

Dated: April 22, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–11040 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ002; FRL–6333–7]

Approval of State Operating Permit Rule Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve revisions to the Operating Permit Rule submitted by the State of New Jersey to fulfill the requirements of Title V of the Clean Air Act, as amended on November 15, 1990. The revisions extend the deadlines for permit applications submitted in electronic format by affected sources. We are proposing to approve the revised Operating Permit Rule which allows electronic applications to be submitted by February 4, 1999 and May 4, 1999, respectively for the last two waves of affected sources. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is publishing a separate document that will serve as the agency's decision to approve the State rule revision. EPA is approving New Jersey's revised Operating Permit Rule, codified at N.J.A.C. 7:27–22, as a direct final rule without prior proposal in the view that the subject revision is noncontroversial and therefore would receive no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before June 3, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th

Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Air Quality Permitting Program, Bureau of Operating Permits, 401 E. State Street, Trenton, New Jersey 08625–0027.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4019.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–10854 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6333–3]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision for Corrective Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization for corrective action to the hazardous waste program submitted by Missouri Department of Natural Resources. In the final rules section of this **Federal Register**, the EPA is authorizing the state's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. 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 the EPA receives adverse written comments, it will withdraw the immediate final rule before its effective date by publishing a timely withdrawal in the **Federal Register**. The EPA will then respond to public comments in a later final rule based on this proposal. The EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 3, 1999.

ADDRESSES: Send written comments to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101; (913) 551–7039. Copies of the Missouri program revision applications and the materials which the EPA used in evaluating the revisions are available for inspection and copying during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176; (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101; (913) 551–7039.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the Rules section of this **Federal Register**.

Dated: April 13, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–11038 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 99–D001]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines and Performance-Based Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the weighted guidelines method of computing profit objectives by adding contracts with performance-based payments to the types of contracts that affect a contractor's cost risk.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before July 6, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 99–D001.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D001 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 99–D001 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131. Please cite DFARS Case 99–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 215.404–4, Profit, requires contracting officers to use the weighted guidelines method of developing a prenegotiation profit or fee objective on most negotiated contract actions that require cost analysis. This method focuses on three profit factors: performance risk, contract type risk, and facilities capital employed. Calculations using these profit factors result in values that become part of the part objective.

For contract type risk, the calculations include an assessment of the degree of cost risk accepted by the contractor under varying contract types as adjusted by the costs of contractor-provided financing. Currently, DFARS 214.404–71–3, Contract type risk and working capital adjustment, provides only two financing choices for fixed-price and fixed-price-incentive contracts: The contract either will provide progress payments or will offer no financing. The proposed rule adds contracts with performance-based payments as a third choice.

The rule proposes to amend DFARS 215.404–71–3 to—

1. Add firm-fixed-price and fixed-price incentive contracts with performance-based payments to the table of contract types at 215.404–71–3(c);

2. Add evaluation criteria at 215.404–71–3(d) that contracting officers should consider when determining the value for contract type risk associated with contracts using performance-based payments; and

3. Remove the reference to the flexible progress payments type of financing at 215.404–71–3(e)(3). DoD does not permit the use of flexible progress payments for contracts awarded as a result of solicitations issued on or after November 11, 1993. A final rule, published in the **Federal Register** on February 23, 1999 (64 FR 8731), removed references to flexible progress payments form DFARS Part 232. The change to 215.404–71–3(e)(3) in this proposed rule does not reflect a policy change but merely removes obsolete language.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, would not use the weighted guidelines method of profit computation. The weighted guidelines method normally is used to compute profit objectives on negotiated contract actions at or above $500,000. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D001 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is proposed to be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 215.404–71–3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6.
Firm-fixed-price, with performance-based payments	(6)	4	2.5 to 5.5.
Firm-fixed-price, with progress payments	(2)	3	2 to 4.
Fixed-price incentive, no financing	(1)	3	2 to 4.
Fixed-price incentive, with performance-based payments	(6)	2	0.5 to 3.5.
Fixed-price with redetermination provision	(3)		
Fixed-price incentive, with progress payments	(2)	1	0 to 2.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	.5	0 to 1.
Labor-hour	(5)	.5	0 to 1.
Firm-fixed-price, level-of-effort	(5)	.5	0 to 1.

(1) ''No financing'' means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When progress payments are used, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When performance-based payments are used—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action 9also see 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contractor type risk. Indicators of this—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(iv) FMS sales (other than those under DoD cooperative logistics support

arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items;

(v) Performance-based payments made less frequently than monthly;

(vi) Performance-based payments totaling less than the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vii) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments provided on a monthly basis;

(vi) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vii) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

* * * * *

[FR Doc. 99–11184 Filed 5–3–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 231, and 232

[FRA Docket No. PB–9; Notice No. 16]

RIN 2130–AB16

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of public meeting.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 1998 (63 FR 48294), FRA proposed revisions to the regulations governing the power braking systems and equipment used in freight and other non-passenger railroad train operations. This document announces a public meeting to discuss specific issues related to FRA's collection of data concerning inspections and defects and the use of defect ratios based upon that data, and the impact that information may have on the proposed rule.

DATES: *Public Meeting:* A public meeting will be held on the date and at the location listed below to provide interested parties the opportunity to discuss FRA's collection of inspection and defect data and the calculation of defect ratios relevant to this NPRM. The date of the public hearing is as follows:

Thursday, May 27, 1999 at 10:00 a.m. in Washington D.C.

ADDRESSES: (1) *Public Meeting:* The public meeting will be held at the following location: *Washington, D.C.:* Conference Area 1, Seventh Floor, 1120 Vermont Avenue, N.W., Washington, D.C.

(2) *Docket Clerk:* Written notification to FRA's Docket Clerk must identify the docket number, and the name, address, and phone number of the participant or attendee. Each notification must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION, CONTACT: John Leeds, Director, Office of Safety Analysis, RRS–20, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20950 (telephone 202–493–6211), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: At the public hearings and technical conference conducted in relation to the NPRM and in written comments submitted subsequent to the public hearings and technical conference, comments were received from some parties which raised concerns regarding FRA's collection of data related to FRA's inspection activity and the number of conditions not in compliance with Federal regulations found during that inspection activity. The comments and correspondence received allege that there are substantial problems with FRA's database, that there has been substantial overreporting of the number of units inspected, and that there has been a systematic deflation of defect ratios. As the allegations and concerns raised to date have been general in nature and because the comment period in this proceeding closed March 1, 1999, FRA believes it is prudent and necessary to conduct a public meeting, on the record, to allow interested parties to fully explain and discuss their concerns. Although many of the concerns appear to involve more than the estimation of power brake defect ratios, which is the focus of this rulemaking, FRA believes that this is the appropriate forum to develop the issues and concerns.

The purpose of the public meeting is to permit the exchange of information and concerns regarding FRA's database and the information developed from that database. One purpose of the meeting is to allow FRA to provide information regarding its internal review of the data and address some of the concerns raised to date, particularly as it relates to the estimation of power brake defect ratios discussed in the NPRM. A second purpose is to allow interested parties to fully develop and articulate the issues and concerns they have with the data gathered and presented by FRA so that these concerns can be fully addressed in any final rule that is developed. It should be noted that the meeting is not intended to allow participants to cross-examine FRA or other participants on either the content of the NPRM or positions taken with regard to the issues or data presented.

Public Participation Procedures

Any person wishing to attend the public meeting should notify the Docket Clerk by mail at the address provided in the **ADDRESSES** section at least five

working days prior to the date of the meeting and submit three copies of the issues he or she wishes to raise at the meeting. The notification should identify the party the person represents, and the particular subject(s) the person plans to raise. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the meeting of persons who fail to provide such notification.

Issued in Washington, D.C., on April 29, 1999.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 99–11189 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–06–U

Notices

Federal Register
Vol. 64, No. 85
Tuesday, May 4, 1999

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

Animal and Plant Health Inspection Service

[Docket No. 99–011–2]

Availability of a Draft Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are advising the public that we are reopening and extending the comment period for a draft environmental assessment and finding of no significant impact that have been prepared by the Animal and Plant Health Inspection Service. The draft environmental assessment and finding of no significant impact relate to the release into the environment of nonindigenous leaf beetles for use as biological control agents to suppress saltcedar, a major weed pest of water courses and riparian habitats. This reopening and extension will provide interested groups and individuals with additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 99–011–1. We will consider all comments that we receive by June 4, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–011–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–011–1.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Ronald D. Hennessey, Entomologist, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1228; (301) 734–8537; or e-mail: ronald.d.hennessey@usda.gov. For copies of the draft environmental assessment and finding of no significant impact, write to Dr. Ronald D. Hennessey at the same address. Please refer to the title of the draft environmental assessment and finding of no significant impact when ordering copies.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1999, we published in the **Federal Register** (64 FR 13395–13396, Docket No. 99–011–1) a notice advising the public that a draft environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release into the environment of nonindigenous leaf beetles for use as biological control agents to suppress saltcedar, a major weed pest of water courses and riparian habitats.

Comments on the notice were required to be received on or before April 19, 1999. We are now advising the public that we are reopening and extending the comment period on Docket No. 99–011–1 for an additional 45 days. This action will allow interested persons additional time to prepare and submit comments.

The draft environmental assessment and finding of no significant impact have been prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 150aa–150jj, 151–165, and 167.

Done in Washington, DC, this 28th day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11129 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—FNS–380, Worksheet for Food Stamp Program Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FNS–380, Worksheet for Food Stamp Program Quality Control Reviews (formerly FCS–380, Integrated Quality Control Review Worksheet).

DATES: Written comments must be submitted on or before July 6, 1999.

ADDRESSES: 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 has 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; (d) ways to 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 of information technology. Comments may be sent to: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of

Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for Food Stamp Program Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380 (Was FCS–380).

Expiration Date: November 30, 1999.

Type of Request: Extension of a currently approved collection.

Abstract: The Form FNS–380 is a worksheet used in the Food Stamp Program to determine eligibility and benefits for households selected for review in the quality control sample of active cases. We estimate the reporting burden for this collection of information averages 9.00 hours per response. This includes the time for analyzing the household case record; planning and carrying out the field investigation; and gathering, comparing, analyzing and evaluating the review data. We estimate the recordkeeping burden associated with this information collection is 0.0236 hours per record. We previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 0584–0074. OMB approved the burden through 11/30/99. Based on the most recent information available, we estimate 55,844 FNS–380 worksheets will be completed annually. This is a 5,996 reduction from the previous estimate of responses and a represents a corresponding 54,105 hour reduction in the reporting and recordkeeping burden. The reduction in responses is a result of allowing States to reduce their sample sizes. We are requesting a three-year approval from OMB for this information collection.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53 State agencies.

Estimated Total Number of Responses Per Year: 55,844 responses.

Estimated Time per Response for Information Collection: 9.0236 hours.

Total Annual Burden: 503,914 hours.

Dated: April 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–11161 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Ohio

AGENCY: Natural Resources Conservation Service (NRCS) in Ohio, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Ohio for review and comment.

SUMMARY: It is the intention of NRCS in Ohio to issue revised conservation practice standards in Section IV of the FOTG. The proposed standard revisions are Critical Area Planting (Code 342), Cover and Green Manure Crop (Code 340), Conservation Cover (Code 327), Contour Farming (Code 330), and Contour Buffer Strips (Code 332). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul DeArman, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 200 North High Street, Room 522, Columbus, Ohio 43215. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *paul.dearman@oh.nrcs.usda.gov*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after the 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 the disposition of those comments and a final determination of change will be made.

Dated: April 16, 1999.

Patrick K. Wolf,

State Conservationist, Columbus, Ohio.

[FR Doc. 99–11134 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

Staff Briefing for the Board of Directors

TIME AND DATE: 2:00 p.m., Thursday, May 13, 1999.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.
3. Status of procurement request for legal advisor to the privatization committee.
4. OIG audit report on FY 1998 financial statements.
5. Bank's annual report for FY 1998.
6. Administrative issues.

Board of Directors Meeting

TIME AND DATE: 9:00 a.m., Friday, May 14, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the February 10, 1999, Minutes.
3. Report on loans approved in the second quarter of FY 1999.
4. Summary of financial activity for the second quarter of FY 1999.
5. Privatization committee report.
6. Consideration of the Bank's annual report for FY 1998.
7. Establish date and location of November 1999 board meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 28, 1999.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 99–11255 Filed 4–30–99; 12:12 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35). This request is being submitted under the emergency clearance procedures.

Agency: Bureau of Export Administration.

Title: Chemical Weapons Convention, Amendment to the Export Administration Regulation (End-Use Certificates, Advance Notifications and Annual Reports).

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New Collection—EMERGENCY APPROVAL REQUESTED.

Burden: 178 hours.

Number of Respondents: 134 (multiple responses).

Avg. Hours Per Response: 30 minutes for notifications, annual reports and end-use certificates.

Needs and Uses: The United States is under obligation by this international treaty to impose certain trade controls. State Parties may only export Schedule 1 chemicals to other State Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year. The Convention also requires that prior to the export of a Schedule 2 or Schedule 3 chemicals to a non-States Party, the exporter must obtain an End-Use Certificate issued by the government of the importing country.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dave Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet__LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by Friday, May 7, 1999 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. This collection is being submitted under the emergency Paperwork Reduction Act procedures.

Dated: April 27, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11095 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 990427107–9107–01]

Initiation of National Security; Investigation of Imports of Crude Oil and Petroleum Products

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of national security investigation and request for public comments.

SUMMARY: This notice is to advise the public that an investigation has been initiated under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products. Interested parties are invited to submit written comments, opinions, data, information, or advice relative to the investigation to the Bureau of Export Administration, U.S. Department of Commerce.

DATES: Comments must be received by June 3, 1999.

ADDRESSES: Written comments (three copies) should be sent to Bernard Kritzer, Manager, Special Projects, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Room 2093, Washington, D.C., 20230.

FOR FURTHER INFORMATION CONTACT: Scott Hubinger, Senior Policy Analyst, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–3825.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1999, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President not later than January 29, 2000.

The imported crude oil and refined petroleum products to be investigated include:

—Crude oil, under 25 degrees API
—Crude oil, 25 degrees API or more
—Motor fuel, including motor gasoline, naphtha-type jet fuel, and kerosene jet fuel
—Motor fuel blending components
—Kerosene derived from petroleum, shale oil, or both, except motor fuel
—Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof, except motor oil
—Fuel oils, under 25 degrees API
—Fuel oils, 25 degrees API or more
—Mineral oil of medicinal grade derived from petroleum, shale oil, or both
—Lubricating oils and greases, derived from petroleum, shale oil, or both, with or without additives
—Mixtures of hydrocarbons not specifically provided for, derived wholly from petroleum, shale oil, natural gas, or combinations thereof, which contain by weight not over 50% of any single hydrocarbon compound
—Paraffin and other petroleum waxes
—Petroleum coke
—Bitumen
—Asphaltum, bitumen, and limestone-rock asphalt
—Petroleum gases (natural gas liquids) and other hydrocarbons

This investigation is being undertaken in accordance with part 705 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (the ''regulations''). Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this investigation to the Office of Chemical and Biological Controls and Treaty Compliance, U.S. Department of Commerce, no later than June 3, 1999.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations as they affect national security, including the following:

(a) Quantity of the article in question or other circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for those articles to meet protected national defense requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce these items;

(d) Growth requirements of domestic industries to meet national defense requirements and/or requirements to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry; and

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

All materials should be submitted with three copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission. File a statement justifying nondisclosure and reference to the specific legal authority claimed, and provide a non-confidential submission which can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 6883, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records at the facility may be obtained from Mr. Henry Gaston, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: April 28, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–11090 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Assistance Center Internet Website Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before July 6, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Thomas Mottley, U.S. Department of Commerce, Export Assistance Center, 6 World Trade Center, Room 635, New York, NY, 10048; Phone number: (212) 466–5220, and fax number: (212) 264–1356.

SUPPLEMENTARY INFORMATION:

I. Abstract

The New York Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. In 1998, it launched an interactive website, *www.nyuseac.org* that is geared to the needs of New York and New Jersey metropolitan industry. One electronic form is proposed to be added to the website in order to improve the usefulness of the site. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

II. Method of Collection

The form is submitted via internet, telephone, fax, or email.

III. Data

OMB Number: 0625–xxxx (New).

Form Number: Not applicable.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $600.00 ($350.00 for respondents and $250.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 28, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11094 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Pipes And Tubes From India: Notice of Final Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India. This review covers one manufacturer/exporter, Rajinder Pipes Ltd. The period of review is May 1, 1997, through April 30, 1998. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review have not changed from those presented in the preliminary results of review, in which we applied total adverse facts available.

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tabash at (202) 482–5047 or Robin Gray at (202) 482–4023, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On February 8, 1999, we published in the **Federal Register** (64 FR 6046) the preliminary results of the review of this order. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. In the preliminary results, we determined the weighted-average dumping margin for the period May 1, 1997, through April 30, 1998, to be 87.39 percent, which is the highest calculated margin of any company in a prior segment of this proceeding. This rate was calculated for the 88/89 administrative review of this order. The Department has now completed the administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although, the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Final Results of the Review

Because we received no comments from interested parties, we have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margin for the period May 1, 1997, through April 30, 1998, is as follows:

Company	Margin percent
Rajinder Pipes Ltd	87.39

The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 7.08 percent, the ''All Others'' rate made effective by the LTFV investigation. The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 20, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11159 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron Metal Castings From India: Postponement of Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of extension of time limits for preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (Department) is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain iron metal castings from India (C–533–063), covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of

1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Michael Grossman, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4406 and (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (April 1998).

Background

On November 30, 1998, the Department initiated an administrative review of the countervailing duty order on certain iron metal castings from India, covering the period January 1, 1997, through December 31, 1997 (63 FR 65748). In our notice of initiation, we stated our intention to issue the final results of this review no later than October 31, 1999. The preliminary results of review are currently due no later than July 5, 1999. Due to the number of producers/exporters of the subject merchandise covered by this review, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Memorandum from Bernard Carreau to Robert S. LaRussa, ''Extension of Preliminary Results: Certain Iron Metal Castings from India (C–533–063),'' dated April 27, 1999.

The deadline for issuing the preliminary results of this review is now no later than November 2, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 28, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 99–11160 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Wisconsin and Oregon Coastal Zone Management Program and the Delaware (DE) and Tijuana River (CA) National Estuarine Research Reserves.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Delaware National Estuarine Research Reserve site visit will be from June 7–11, 1999. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 9, 1999, at 7:00 p.m., at the Delaware National Estuarine Research Reserve, St. Jones Center for Estuarine Studies, 818 Kitts Hummock Road, Dover, DE 19901.

The Tijuana River National Estuarine Research Reserve in California site visit will be from July 19–23, 1999. One public meeting will be held during the week. This public meeting will be held on Wednesday, July 21, 1999, at 7:00 p.m., at the Reserve's Visitor's Center, 301 Caspian Way, Imperial Beach, CA.

The Wisconsin Coastal Zone Management Program evaluation site visit will be from June 14–18, 1999. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 16, 1999, at 6:00 p.m., at the Northern Great Lakes Visitor's Center Auditorium, 29270 County Highway G, Ashland, Wisconsin, 54806.

The Oregon Ocean Coastal Management Program site visit will be from June 14–18, 1999. A public meeting will be held on Tuesday, June 15, 1999, from 7:00 p.m.–9:00 p.m. at the Cannon Beach City Hall, 163 Gower Street, Cannon Beach, Oregon.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-

West Highway, Silver Spring, Maryland 20910, (301) 713–3155, etc. 114.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: April 28, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–11181 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: U.S. Patent Number 5,858,802 entitled, ''Patterning Antibodies On a Surface,'' is an invention assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent cited should be sent to the Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, Maryland 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Dated: April 21, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–11147 Filed 5–3–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Unmanned Vehicles for Mine Countermeasures will meet to identify and state the requirement for unmanned vehicles that would operate in support of the Mine Warfare Mission; identify the unmanned vehicle alternatives which apply to the mine countermeasures mission, describe them, assess their pros and cons; review the current development programs and identify gaps and overlaps; and report findings and recommendations. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, May 3, from 9:00 a.m. to 5:00 p.m.; and Tuesday, May 4, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: April 23, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–11148 Filed 5–3–99; 8:45 am]

BILLING CODE 3810–FF–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Meeting Notice

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's(Board) meeting described below.

TIME AND DATE OF MEETING: :9:00 a.m., May 25, 1999.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board will convene the tenth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plans for the Board's Recommendations 95–2, Integrated Safety Management (''ISM'') and 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). Included in this discussion will be the status of actions on the Secretary of Energy's March 3, 1999, Safety-Accountability and Performance Initiative Memorandum. Specific topics will include, but not be limited to, the following.

- Recommendation 98–1 implementation progress, including EH–2 review of evaluation protocols, the Corrective Tracking System, modification of directives, disposition of legacy issues, and the Integrated Corrective Action Management team charter.
- Recommendation 95–2 overall progress, including the Manual of Functions and Responsibilities, implementation of Policy 450.5, Line Environment, Safety and Health Oversight, issues tracking systems, applications of lessons learned, and performance measurement as it relates to department of Energy Acquisition Regulations.
- The Secretary of Energy's Safety-Accountability and Performance Memorandum of March 3, 1999.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: April 28, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–11201 Filed 4–29–99; 4:11 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

DOE Implementation Plan for Recommendation 98–2 of the Defense Nuclear Facilities Safety Board, Safety Management at the Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 98–2, concerning the safety management at the Pantex plant, on October 7, 1998 (63 FR 53884). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 98–2 to the Defense Nuclear Facilities Safety Board after acceptance of the Recommendation by the Secretary. The Department's implementation plan was sent to the Safety Board on April 22, 1999, and is

available for review in the Department of Energy Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585.

Issued in Washington, DC, on April 28, 1999.

Mark B. Whitaker, Jr.

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

April 22, 1999.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004

Dear Mr. Chairman: We are pleased to forward the Department of Energy implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 98–2, ''SAFETY MANAGEMENT AT THE PANTEX PLANT.'' The DNFSB Recommendation 98–2 is consistent with the Department's focus on the Pantex Plant safety management enhancements in the development of the Pantex Plant integrated safety management system as part of the Department's implementation plan for the DNFSB Recommendation 95–2, ''SAFETY MANAGEMENT.''

We understand that the objective of Recommendation 98–2 is to strengthen and simplify the Pantex Plant safety management and work practices. The primary objectives of this implementation plan are to ensure practical and timely implementation of safety improvements and to better allow for tailoring of Seamless Safety-21 principles. The activities delineated in the plan should simplify and standardize activity level safety management practices and processes for all work involving nuclear explosives at the Pantex Plant.

Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, is the responsible manager for this implementation plan. Mr. Ives can be contacted at 202–586–4879.

Yours sincerely,

Bill Richardson

[FR Doc. 99–11135 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for a Multi-Purpose Canister or Comparable System for Idaho National Engineering and Environmental Laboratory Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: This Record of Decision announces the Department of Energy's (DOE's) decision to use a multi-purpose canister or comparable system for spent nuclear fuel at the Idaho National Engineering and Environmental Laboratory (INEEL). Except for those fuels that may be processed (e.g., sodium bonded fuel) and a small fraction of spent nuclear fuel (10% or less) that may be suitable for shipment using existing transportation casks, a multi-purpose canister or comparable system will be used for the loading and storage of DOE-owned spent nuclear fuel at the INEEL, and transportation of this spent nuclear fuel for ultimate disposition outside the State of Idaho. This decision is based on analyses contained in two Environmental Impact Statements: the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (SNF & INEL EIS), dated April 1995 (DOE/EIS–0203–F); and the Final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel (Container System EIS), dated November 1996 (DOE/EIS–0251), in which DOE participated as a cooperating agency and then adopted (61 FR 59435, October 9, 1996). DOE recently prepared a Supplement Analysis for a Container System for the Management of DOE Spent Nuclear Fuel Located at the INEEL (March 1999) under 10 CFR 1021.314(c), and determined that no further NEPA documentation is needed.

FOR FURTHER INFORMATION: For further information on DOE's use of a multi-purpose canister or comparable system for INEEL spent nuclear fuel, or to receive a copy of the Supplement Analysis and Determination, please contact Mr. Ron Ramsey, Mail Stop 1154, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, 83401, or phone (208) 526–1545. The SNF & INEL and Container System EISs, the Supplement Analysis and supporting documentation are available for review on request at the Department of Energy Idaho Operations Office located at 850 Energy Drive, Idaho Falls, Idaho. Copies of the SNF & INEL and Container System EISs and the Supplement Analysis also are available for review at the Idaho Falls and Pocatello, Idaho, Public Libraries. The Supplement Analysis and Determination also are available on the INEEL Website at: http://www.inel.gov/environment/em/nepa.html.

For information on DOE's NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or phone (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In litigation that began in 1991, the State of Idaho asserted that DOE had violated NEPA by not conducting a thorough analysis of environmental impacts associated with spent nuclear fuel storage and transportation. During the litigation, DOE completed the SNF & INEL EIS in April 1995. The litigation was settled when DOE, the U.S. Department of the Navy (Navy), and the State of Idaho executed a Settlement Agreement that was subsequently incorporated into a federal court order [*Consent Order in United States of America* v. *Batt, Civil No. 91–0054–S–ELJ (D.Id.)* dated October 17, 1995] (Idaho Settlement Agreement). Section F.4. of the Idaho Settlement Agreement requires, in part, that DOE and the Navy shall use multi-purpose canisters or comparable systems to prepare spent nuclear fuel for shipment and ultimate disposal outside the State of Idaho, and that the Record of Decision on the NEPA analysis shall be completed by April 30, 1999.

The Navy as lead agency and DOE as a cooperating agency prepared and issued the final Container System EIS in November 1996. The Navy issued a Record of Decision on the Container System EIS on January 8, 1997 (62 FR 1095), selecting a dual-purpose canister system for the management of post-examination naval spent nuclear fuel and special case low-level waste. On May 1, 1997, the Navy issued a second Record of Decision on the Container System EIS (62 FR 23770) that announced that naval spent nuclear fuel that is or will be stored at the Idaho Nuclear Technology Engineering Center (INTEC) (formerly the Idaho Chemical Processing Plant) will be loaded into dual-purpose canisters at the Naval Reactors Facility (NRF). Both INTEC and the NRF are located at INEEL. The second Record of Decision also announced that all dual-purpose

canisters loaded with naval spent nuclear fuel and special case waste will be stored at a site adjacent to the Expended Core Facility at NRF, regardless of whether the contained fuel had previously been stored at INTEC, or had been received at INEEL before or after the dry storage facility at NRF commenced operations. (The second Record of Decision makes no decision that naval special case waste will be shipped to a geologic repository, as will naval spent nuclear fuel.) The Navy's decision to implement the preferred alternative, i.e., to use a dual-purpose canister system for naval spent nuclear fuel, was issued to satisfy the Navy's commitment under Section F.4. of the Idaho Settlement Agreement. Although DOE was a cooperating agency in the preparation of the Container System EIS, subsequently adopted the EIS, and co-signed both Records of Decision issued by the Navy, DOE-owned spent nuclear fuel was not separately analyzed in the Container System EIS, and neither Record of Decision addressed DOE-owned spent nuclear fuel.

The Department's Idaho Operations Office (DOE–ID) prepared a Supplement Analysis for a Container System for the Management of DOE Spent Nuclear Fuel Located at the INEEL (March, 1999) to evaluate the adequacy of both the Container System and SNF & INEL EISs for the proposal to use a multi-purpose canister or comparable system for DOE-owned spent nuclear fuel. The purpose of a Supplement Analysis is to examine whether, in light of new information or changes in the proposed action, an existing EIS should be supplemented, a new EIS should be prepared, or no further NEPA documentation is required.

The Supplement Analysis demonstrated that the potential environmental impacts of using a multi-purpose canister, or comparable system, to load, store and transport DOE-owned spent nuclear fuel located on the INEEL are bounded by or are reasonably comparable to the impacts analyzed in the SNF & INEL and Container System EISs. Accordingly, on March 4,1999, DOE issued the ''Department of Energy Determination and Record of Decision on National Environmental Policy Act (NEPA) Analysis,'' which concludes that the proposed multi-purpose canister or comparable system for DOE-owned spent nuclear fuel at the INEEL is adequately analyzed in the SNF & INEL and Container System EISs, and that, therefore, no further NEPA documentation is required.

Alternatives Considered

The Container System EIS considered six alternative dry storage container systems for the loading, storage, transport, and possible disposal of post-examination naval spent nuclear fuel and the management of special case waste (i.e., low-level radioactive waste that contains concentrations of certain short- and long-lived isotopes which requires disposal by more stringent measures than land burial). The alternatives included the use of either existing dry storage containers or dry storage containers that could be produced by manufacturers of such equipment.

Because of differences in configurations among naval spent nuclear fuel assemblies, all alternatives required containers to have internal baskets designed for specific naval spent nuclear fuel types. For the purposes of transportation analyses, the SNF & INEL EIS assumed the use of existing transportation casks licensed by the U.S. Nuclear Regulatory Commission for transportation of bare (i.e., non-canisterized) fuel assemblies. The SNF & INEL EIS analyzed truck and rail alternatives for transportation from the INEEL to a repository, but did not analyze the use of specific alternative types of containers, such as dual-purpose (i.e., storage and transportation) or multi-purpose (i.e., storage, transportation and disposal) canisters.

A brief description of the six alternatives analyzed in the Container System EIS follows:

(1) *No-Action Alternative*—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository or a centralized interim storage site using the Navy M–140 transportation cask.

(2) *Current Technology/ Supplemented by High Capacity Rail Alternative*—This alternative uses the same storage methods and M–140 transportation cask described in the no-action alternative, but with redesigned internal structures for the M–140 cask to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required.

(3) *Transportable Storage Cask Alternative*—This alternative uses an existing, commercially available transportable storage cask for storage at the INEEL as well as for transportation to a repository or centralized interim storage site.

(4) *Dual-Purpose Canister Alternative*—This alternative uses an existing, commercially available canister and overpack system for storage at the INEEL and shipment of naval spent nuclear fuel to a geologic repository or centralized interim storage site.

(5) *Multi-Purpose Canister Alternative*—This alternative uses about 300 large (125-ton) multi-purpose canisters for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of individual spent nuclear fuel assemblies.

(6) *Small Multi-Purpose Canister Alternative*—This alternative uses about 500 smaller (75-ton) multi-purpose canisters, rather than large multi-purpose canisters.

The Container System EIS evaluated each of the alternatives against a set of criteria to select a preferred alternative. The analysis found that the environmental and public health impacts would be small and would differ little among alternatives for: the manufacture of any of the dry storage container systems; the operations of handling, storage, transportation and unloading at a repository; and the construction of facilities. With respect to the environmental and public health impacts, all the alternatives are considered comparable and indistinguishable and equally environmentally preferable. In its Record of Decision, the Navy decided that dual-purpose canisters represented the best system for naval fuel when compared to the other alternatives in terms of cost, operational efficiency, industry trends, regulatory acceptance and environmental and public health impacts. The Container System EIS established that dual-purpose and multi-purpose canister systems are comparable, with the possible exception that a multi-purpose canister can also be used for disposal.

Decision

DOE has decided to use a multi-purpose canister or comparable system (e.g., dual-purpose canister system or other system as described and analyzed in the context of the Container System EIS) for the management of DOE-owned spent nuclear fuel at the INEEL, based on cost, operational efficiency, regulatory acceptance, and environmental and public health considerations. Except for those fuels that may be processed (e.g., sodium bonded fuel) and a small fraction of spent nuclear fuel (10% or less) that may be suitable for shipment using existing transportation casks, a multi-purpose canister system (or comparable system) will be used for the loading and storage of DOE-owned spent nuclear fuel at the INEEL, and for transportation

of this spent nuclear fuel for ultimate disposition outside the State of Idaho. This decision does not commit DOE to a single course of action or the use of a particular spent nuclear fuel container system if improvements in design are made in the future and are selected pursuant to future NEPA review and coordination with the State of Idaho.

Mitigation

DOE has not identified the need for mitigation measures beyond the strictly controlled conduct of operations associated with the management of DOE-owned spent nuclear fuel at INEEL that is integral to the selected alternative. DOE has directives and regulations for the conduct of spent nuclear fuel management operations. All government spent nuclear fuel shipments must comply with DOE and U.S. Department of Transportation regulations, and DOE has adopted stringent controls for minimizing occupational and public radiation exposure. The policy of these programs is to reduce radiation exposure to as low as reasonably achievable. Singly and collectively, these measures avoid, reduce, or eliminate any potentially adverse environmental impacts from spent nuclear fuel management activities, including those associated with containerization.

Approval

Issued in Washington, D.C. this 27th day of April 1999.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 99–11063 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 12, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation—James D. Werner, U.S. Department of Energy, Headquarters—Programmatic Environmental Impact Statement (PEIS) Lawsuit Settlement Database
2. Special Report on the Canyons in Los Alamos County
3. Committee Reports
4. Other Board business will be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements to the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing Kevin Rohrer at the address listed above.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11136 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 13, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m.—Call to Order/Discussion
6:00 p.m.—Approve Meeting Minutes
6:05 p.m.—Public Comment/Questions
6:30 p.m.—Presentations
7:15 p.m.—Sub Committee Reports
8:15 p.m.—Administrative Issues
8:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item of the meeting agenda. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling (502) 441–6804.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11137 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, May 17, 1999: 6:30 P.M.—9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminister, CO 80030–2140.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; Phone (303) 420–7855; FAX (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities. The Rocky Flats Citizen Advisory Board (RFCAB) is dedicated to providing informed recommendations and advice to the agencies (Department of Energy, Colorado Department of Public Health and Environment and the Environmental Protection Agency), government entities and other interested parties on policy and technical issues and decisions related to cleanup, waste management and associated activities. The Board is dedicated to public involvement, awareness and education on Rocky Flats issues.

Tentative Agenda

Continued discussion on low level mixed waste disposition issues:

- Transportation.
- Comparison of disposal sites.
- Information on the Deer Trail facility in eastern Colorado.
- Initiation of preparation of vision statement on Board's position(s) on disposition of low level and low level mixed waste.

Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; phone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or call Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11138 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee; Correction

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting Correction.

SUMMARY: On April 12, 1999, the Department of Energy published a notice of open meeting announcing a meeting of the Fusion Energy Sciences Advisory Committee (64 FR 17650). In that notice, the meeting was scheduled for May 19–21, 1999. Today's notice is announcing that the meeting will only take place on May 20–21, 1999. A revised tentative agenda follows:

Tentative Agenda

Thursday, May 20, 1999

8:30 a.m. Presentations of Princeton Plasma Research Laboratory (PPPL) Research Activities
10:30 a.m. Break
10:45 a.m. Presentations of PPPL Research Activities continue
12:15 p.m. Lunch
1:30 p.m. Presentations of Research Activities at Universities (R. Fonck)
3:15 p.m. Break
3:30 p.m. Inertial Confinement Fusion/ Inertial Fusion Energy Activities at the Naval Research Laboratory (S. Bodner)
4:15 p.m. Fusion Energy Sciences Advisory Committee Discussions
5:15 p.m. Public Comment
6:00 p.m. Adjourn

Friday, May 21, 1999

8:30 a.m. Status Report on Proof-of-Principle Experiments Review
10:00 a.m. Break
10:15 a.m. Status Report on Proof-of-Principle Experiments Review
11:15–12:30 Tour of PPPL Facilities

Issued in Washington, D.C. on April 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11065 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; State Energy Advisory Board, Open Meeting

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: May 13, 1999 from 9:00 am to 5:00 pm and May 14, 1999 from 9:00 am to 12:00 pm.

PLACE: National Renewable Energy Laboratory (NREL), Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- Deploying technology from DOE laboratories to the States;
- How STEAB's role to help facilitate the market of energy efficient and renewable energy technologies can be assisted by coordination with National Council of State Legislatures;
- Federal efforts to market energy efficiency and renewable energy technologies.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11064 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–322–000]

El Paso Natural Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 16, 1999, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP99–322–000, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Section 157.5, et seq., of the Federal Energy Regulatory Commission's (Commission) Regulations Under the NGA, for a certificate of public convenience and necessity authorizing the construction and operation of certain lateral pipeline and metering facilities, hereinafter referred to as the Willcox Lateral. El Paso states that construction of the Willcox Lateral will allow the transportation and delivery of natural gas to two points along the International Boundary between the United States and Mexico in Cochise County, Arizona, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the Comision Federal de Electricidad (CFE) has an existing power plant near the City of Hermosillo, Sonora, Mexico and recently completed a Request For Proposal (RFP) for a second power plant near Hermosillo. Additionally, CFE is scheduled to close an RFP in May 1999 for a new power plant near the City of Agua Prieta, Sonora, Mexico, referred to as the El Fresnal Power Plant. These three power plants will require natural gas as fuel to generate electricity.

Thus, El Paso is proposing to construct the Willcox Lateral to serve this present and future power plant infrastructure in Northern Sonora, Mexico. El Paso claims that the Willcox Lateral will have a design capacity of 130,000 Mcf per day and will provide the necessary facilities to permit the transportation of natural gas to two points of interconnection at the International Boundary. Once delivered to these new delivery points, El Paso says that gas will be transported to the existing and proposed power plants in or near Hermosillo and Agua Prieta, Mexico, as well as other potential markets in Northern Mexico.

Specifically, the proposed Willcox Lateral facilities, all located in Cochise County, Arizona, will consist of a 20″ O.D. lateral line commencing at approximately milepost 407.1 on El Paso's California Line and First Loop Line on the suction side of the Willcox Compressor Station extending south approximately 55.7 miles which then bifurcates into two 16″ O.D. east and west branch lateral lines with metering facilities near the terminus of each branch lateral line. The west branch lateral line extends southwesterly for approximately 2.9 miles, terminating near Monument 90 on the International Boundary (the 20″ O.D. lateral line and the 16″ O.D. west branch lateral line constitute Line No. 2163). The east branch lateral line extends southeasterly for approximately 12.2 miles, terminating at a point southwest of Douglas, Arizona at the International Boundary between the United States and Mexico (Line No. 2164). The Willmex Delivery Point is to be located near the terminus of Line No. 2163 adjacent to the existing Monument 90 Meter Station, and the El Fresnal Delivery Point is to be located near the terminus of Line No. 2164.

El Paso indicates that it has estimated the cost of constructing the Willcox Lateral to be approximately $30,215,000. El Paso requests authorization no later than December 31, 1999 in order to meet an in-service date of September 1, 2000.

El Paso states that, in support of the Willcox Lateral, and to demonstrate market support for the Willcox Lateral, it has entered into three separate, but mutually exclusive, firm TSAs providing for the delivery of natural gas to the El Fresnal Power Plant and a fourth firm TSA providing for transportation service to the second Hermosillo Power Plant. El Paso states that it is currently negotiating contracts for the existing Hermosillo Power Plant.

Based on the cost of the proposed Willcox Lateral facilities, El Paso calculated a separate incremental rate attributable to the cost of service for the proposed Willcox Lateral. The incremental reservation rate for the Willcox Lateral is proposed to be $0.1467 per dth on a daily basis and is referred to as the ''Willcox Lateral Facilities Charge.'' El Paso proposes the calculated incremental rate as the tariff rate applicable to firm transportation service on the Willcox Project.

Any person desiring to be heard or to make any protest with reference to said

document should, on or before, May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) 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 does not have to intervene, however, in order to have environmental 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 document 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 El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11083 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP 99–323–000]

El Paso Natural Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 16, 1999, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP99–323–000, pursuant to Section 3 of the Natural Gas Act (NGA) and Subpart B of Part 153 of the Federal Energy Regulatory Commission's (Commission) Regulations, for an order authorizing the siting, construction, and operation of pipeline facilities and the place of exit for export of natural gas at two separate points along the International Boundary between the United States and Mexico in Cochise County, Arizona (International Boundary).

Additionally, El Paso requests, pursuant to Subpart C of Part 153 of the Commission's Regulations and in compliance with Executive Order No. 10485, as amended by Executive Order No. 12038, two Presidential Permits for the construction, operation, maintenance, and connection of pipeline facilities for the export of natural gas at the International Boundary, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the Comision Federal de Electricidad (CFE), a decentralized Public Organism of the United Mexican States, has an existing power plant near the City of Hermosillo, Sonoro, Mexico and recently completed a Request For Proposal (RFP) for a second power plant near Hermosillo. Additionally, CFE is scheduled to close an RFP in May 1999 for a new power plant near the City of Agua Prieta, Sonoro, Mexico, referred to as the El Fresnal Power Plant. These three power plants will require natural gas as fuel to generate electricity.

For the exportation of natural gas at the International Boundary, El Paso proposes to construct approximately 60 feet of 16'' O.D. pipeline, with appurtenance, at the terminus of the 16'' O.D. lateral lines extending from the Willmex Delivery Point, located near the Monument 90 Meter Station and from the El Fresnal Delivery Point near Douglas, Arizona, both located in Cochise County, Arizona to the U.S./Mexico border. These facilities, which will constitute two separate border crossing facilities, are located on the downstream side of the Willmex and El Fresnal Delivery Points, which are being proposed for construction under Section 7(c) application being filed concurrently.[1] Existing pipeline facilities owned by Pemex on the Mexican side of the International Boundary will receive the natural gas from the Willmex Delivery point. Currently, no Mexican pipeline facilities exist downstream of the El Fresnal Delivery Point. However, the El Fresnal Power Plant RFP awarding process will determine responsibility for downstream pipeline construction, ownership, and operation.

El Paso states that, in support of the Willcox Lateral Project, and to demonstrate market support for the Willcox Lateral Project, it has entered into three separate, but mutually exclusive, firm TSAs providing for the delivery of natural gas to the El Fresnal Power Plant and a fourth firm TSA providing for transportation service to the second Hermosillo Power Plant. El Paso is currently negotiating contracts for the existing Hermosillo Power Plant.

Any person desiring to be heard or to make any protest with reference to said document should, on or before, May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) 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 herein 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

[1] In Docket No. CP999–322–000, El Paso has filed an application proposing to construct the Willcox Lateral, which will consist of certain lateral pipeline and metering facilities. The lateral line will interconnect with the proposed border crossing facilities in order to facilitate service to this present and future power plant infrastructure in Northern Sonora, Mexico.

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 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 document 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 field, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing still be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11084 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1999.

Take notice that on April 22, 1999, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), effective May 1, 1999, the following tariff sheets:

Thirty-Fourth Revised Sheet No. 8A
Twenty-Fifth Revised Sheet No. 8A.01
Twenty-Sixth Revised Sheet No. 8A.02
Thirtieth Revised Sheet No. 8B
Twenty-Third Revised Sheet No. 8B.01

FGT states that it filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.76% for the six-month Summer Period beginning April 1, 1999 in Docket Nos. TM99–4–34–000 and –001 filed on February 25, 1999 and March 5, 1999, respectively. On March 17, 1999, prior to the Commission's approval of the Base FRCP, FGT Submitted a flex adjustment of <0.26%> to be effective April 1, 1999 in Docket No. TM99–5–34–000. The Base FRCP of 2.76% was accepted by Commission letter order issued March 29, 1999, and the flex adjustment was subsequently accepted on April 9, 1999, resulting in an Effective Fuel Reimbursement Charge Percentage of 2.50% effective April 1, 1999. In the instant filing, FGT is revising its flex adjustment from <0.26%> to 0.24% to be effective May 1, 1999, which results in an Effective Fule Reimbursement Charge Percentage of 3.00% when combined with the Base FRCP of 2.76%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27A.2.b of he General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50% from the Base FRCP, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 of 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11089 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–336–000]

Mid Louisiana Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 23, 1999, Mid Louisiana Gas Company (Mid Louisiana), 1100 Louisiana, Suite 2950, Houston, Texas 77002, filed in Docket No. CP99–336–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Midcoast Gas Services, Inc., certain compression facilities described as one Chicago Pheumatic 6FE065 750 Hp unit which is located at Mid Louisiana's DeSiard compressor station in Ouachita Parish, Louisiana, all as more fully set forth in the application on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 1999, 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 NGA (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 NGA 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 Mid Louisiana Gas Company to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11085 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–344–000]

Reliant Energy Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 28, 1999.

Take notice that on April 26, 1999, Reliant Energy Gas Transmission Corporation Applicant), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–344–000 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 157.216) for approval to construct and operate certain facilities located in Pope County, Arkansas, under Applicant's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant specifically proposes to construct and operate a two-inch delivery tap and first-cut regulator to serve Arkla (Arkla), a division of Reliant Energy, Incorporated, on Applicant's Line B. Applicant states that the total volumes of natural gas to be delivered to the proposed tap are 85 Dth annually and 1 Dth on a peak day. Applicant asserts that the facilities proposed herein will be constructed at an estimated cost of $1,833 and that Arkla will reimburse Applicant the construction costs.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11086 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CO99–320–000]

Sumas Energy 2, Inc.; Notice of Application for Section 3 Authorization and Request for a Presidential Permit

April 28, 1999.

Take notice that on April 15, 1999, Sumas Energy 2, Inc. (SE2), 335 Parkplace, Suite 110, Kirkland, Washington 98033, filed an application pursuant to Section 3 of the Natural Gas Act, Subpart B of Part 153 of the Commission's regulations, and Executive Order Nos. 10485 and 12038. SE2 seeks a Presidential Permit and Section 3 authority to construct, operate and maintain its own border crossing and pipeline facilities to import gas from Canada, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Specifically, SE2 intends to construct, own, and operate approximately 4.5 miles of 12-inch-diameter pipeline near the international boundary between the United States and Canada near Sumas, Washington. The proposed pipeline will transport gas to a planned 720 Megawatt nominal electrical generating station to be located in Sumas, Washington. The proposed pipeline and the jurisdictional border crossing, facilities will be connected with the pipeline facilities of Westcoast Energy, Inc. at the U.S./Canada border and will have a design capacity to import up to 140,000 Mcf per day. SE2 will neither offer nor provide service to the public. SE2's proposed pipeline will transport gas only to its facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 1999, 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 to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 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 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 SE2 to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–11082 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–013]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 28, 1999.

Take notice that on April 22, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing a Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective May 1, 1999.

Tennessee states that the filed Negotiated Rate Arrangement reflects a negotiated rate between Tennessee and New Jersey Natural Gas Company (New Jersey) for transportation under Rate Schedule FT–A to be effective May 1, 1999 through January 31, 2003.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11087 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–15–000]

Vidor Pipeline Company; Notice of Petition For Adjustment

April 28, 1999.

Take notice that on March 5, 1999, Vidor Pipeline Company (VPC) filed pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment under Section 285.123(b)(1)(ii) of the Commission's Regulations to permit VPC to use its tariff on file with the Railroad Commission of Texas (TRC), for services performed pursuant to NGPA Section 311.

In support of its petition, VPC states that it is an intrastate pipeline providing transportation service within the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. VPC states that it will in the future perform transportation services pursuant to NGPA Section 311(a)(2) on behalf of interstate pipeline companies and/or local distribution companies served by interstate pipeline companies. VPC states its system will soon be connected to the interstate facilities of Transcontinental Gas Pipe Line Corporation.

VPC requests an adjustment from 18 CFR Part 284(C) to permit VPC to base its rates for Section 311(a) services on the rates contained in its tariff for Hess Energy Services Company, LLC filed with the TRC. VPC believes the interstate transportation service performed on behalf of Hess Energy Services Company, LLC can be viewed as ''comparable'' to the services contemplated under Section 311.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the Federal Register. The petition for adjustment is on file with the Commission and is available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11088 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of OASIS How Working Group Meeting

April 28, 1999.

Take notice that on May 24, 1999, from 8:00 AM to 5:00 PM, and on May 25, 1999, from 8:00 AM to 12:00 noon, the OASIS How Working Group (How Group) will conduct its monthly meeting at the Commission's offices at 888 First Street, N.E., Room 3M–2A, Washington, D.C. 20426. The How Group is a voluntary industry group with a diverse membership that has made recommendations to the Commission on the Open Access Same-time Information System (OASIS) and related matters. It is expected that the How Group will discuss OASIS-related issues at the meetings. The meetings will be open to interested participants and the public.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11081 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–6]

Peer Review Workshop on Guidance for Conducting Health Risk Assessment of Chemical Mixtures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA Risk Assessment Forum (Forum) is announcing a peer review workshop convened by Eastern Research Group, Inc., an EPA contractor, for scientific peer review of the EPA draft document Guidance for Conducting Health Risk Assessment of Chemical Mixtures. The workshop will be held in Cincinnati, Ohio, and will be open to members of the public as observers. The peer review, to be conducted by scientists from outside EPA, is being organized to review the procedures and related issues presented in the document Guidance for Conducting Health Risk Assessment of Chemical Mixtures. The Forum Technical Panel will consider the opinions of experts outside the Agency in finalizing the document.

DATES: The workshop will begin on Thursday, May 20, 1999 at 9:00 a.m. and end on Friday, May 21, 1999 at 4:00 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency (EPA) Briedenbach Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Since seating capacity is limited, please contact Eastern Research Group, Inc., Tel.: (781) 674–7374, by May 14, 1999 to attend the workshop as an observer.

FOR FURTHER INFORMATION CONTACT: For technical inquires, contact Dr. Richard Hertzberg, U.S. EPA Region 4, 10th Floor WMD, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104. Tel.: (404)562–8663. The document will be Internet-accessible from the Risk Assessment Forum publications page, at http://www.epa.gov/ncea/raf/rafpub.htm. Inquiries concerning the workshop should be directed to Eastern Research Group, Inc.

SUPPLEMENTARY INFORMATION: To address concerns over health risks from multichemical exposures, the U.S. EPA issued Guidelines for Health Risk from Exposure to Chemical Mixtures in 1986 (U.S. EPA, 1986). Those Guidelines described broad concepts related to mixtures exposure and toxicity and included few specific procedures. In 1989, the U.S. EPA published guidance for the Superfund program on hazardous waste that gave practical steps for conducting a mixtures risk assessment (U.S. EPA, 1989). Also in 1989, the U.S. EPA published the revised document on the use of Toxicity Equivalence Factors for characterizing health risks of the class of chemicals including the dibenzo-dioxins and dibenzofurans. In 1990, the U.S. EPA published a Technical Support Document to provide more detailed information on toxicity of whole mixtures and on toxicologic interactions (e.g., synergism) between chemicals in a binary (two-chemical) mixture (U.S. EPA, 1990). The concept of toxicologic similarity was also discussed.

This guidance document, Guidance for Conducting Health Risk Assessment of Chemical Mixtures, represents a supplement to the original Guidelines of 1986 and is intended to reflect the evolutionary scientific development in the area of chemical mixtures risk assessment. Consequently, many of the former discussions have been reiterated. New guidance has been provided that gives more specific details on the nature of the desired information and the procedures to use in analyzing the data. This supplement to the earlier guidances is organized according to the type of data available to the risk assessor, ranging from data rich to data poor situations. Procedures are described for assessment using data on the mixture of concern, data on a toxicologically related mixture, as well as data on the mixture component chemicals. The state of science varies dramatically for these three approaches. No single approach is recommended in this supplementary guidance. Instead, guidance is given for the use of several approaches depending on the nature and quality of the data. Although several of the procedures described in the guidance have not yet been applied in actual health risk assessments, their use and the generation of data to support their use is encouraged, along with research on new procedures to improve or replace those discussed. As new information relevant to health risk from exposure to chemical mixtures becomes available, additional guidance documents will be published. Following the external peer review, reviewers' comments will be addressed and the revised guidance will undergo Risk Assessment Forum final review.

Dated: April 26, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–11167 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–1]

Notice of Availability of Topical Scientific Reports for an Integrated Assessment of the Causes and Consequences of Hypoxia in the Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) in coordination with National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, invite public comments on six topical scientific reports requested by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) for an assessment of the causes and consequences of hypoxia in the Gulf of Mexico as required by section 604(a) of Public Law 105–383. The six topic papers will be used by the CENR Gulf of Mexico Hypoxia Working Group to prepare an Integrated Assessment which will provide ecological and economic analysis of various options for reducing nutrient loads carried by the Mississippi River to the Gulf of Mexico. This Integrated Assessment will be delivered to the President, Congress and the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

DATES: Comments must be received by August 2, 1999. All comments received after the formal comment period will be reviewed by the Gulf of Mexico Hypoxia Working Group and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration along with the final Integrated Assessment.

ADDRESSES: Comments should be submitted to: Gulf of Mexico Hypoxia Working Group National Centers for Coastal Ocean Science, WS 13446 SSMC4, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. John Field, National Ocean Service, National Centers for Coastal Ocean Science, WS 13446 SSMC4, 1305 East-West Highway, Silver Spring, MD 20910, telephone 301–713–3060 x135, Internet John.Field@noaa.gov; or Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone (202) 260–7061; Internet: belefski.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

Purpose

The Environmental Protection Agency leads the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force consisting of Federal, State, and Tribal members. The purpose of this group is to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

Status

These reports will provide the basis for the formulation of an Integrated Assessment of hypoxia in the northern Gulf of Mexico, as required in section 604(a) of Public Law 105–383. This law requires the assessment to consider the distribution, dynamics, and causes; ecological and economic consequences; sources and loads of nutrients transported by the Mississippi River to the Gulf of Mexico; effects of reducing nutrient loads; methods for reducing nutrient loads; and the social and economic costs and benefits of such methods. This assessment will be delivered to the President and Congress and will subsequently provide the basis for the Action Plan required by section 604(b) of Public Law 105–383.

Each of the reports has undergone extensive peer review by independent scientific experts. These reports, along with the public comment on them, will be considered in developing the Integrated Assessment and, subsequently, the Action Plan.

The six reports are entitled:

TOPIC 1—Characterization of hypoxia. This report describes the seasonal, interannual, and long-term variation of hypoxia in the northern Gulf of Mexico, and its relationship to nutrient loadings. It also documents the relative roles of natural and human-induced factors in determining the size and duration of the hypoxic zone.

TOPIC 2—Ecological and economic consequences of hypoxia. This report presents an evaluation of the ecological and economic consequences of nutrient loading, including impacts on Gulf of Mexico fisheries and the regional and national economy.

TOPIC 3—Flux and sources of nutrients in the Mississippi-Atchafalaya River Basin. This report identifies the sources of nutrients within the Mississippi/Atchafalaya system and within the Gulf of Mexico with two distinct components, first, the geographic location of the most significant nutrient additions, and second, the relative importance of specific human activities in contributing to these loads.

TOPIC 4—Effects of reducing nutrient loads to surface waters within the Mississippi River basin and Gulf of Mexico. This report estimates the effects of nutrient source reductions in the Mississippi-Atchafalaya Basin on water quality in these waters and on primary productivity and hypoxia in the Gulf of Mexico.

TOPIC 5—Reducing nutrient loads, especially nitrate-nitrogen, to surface water, groundwater, and the Gulf of

Mexico. This report identifies and evaluates methods to reduce nutrient loads to surface water, ground water, and the Gulf of Mexico.

TOPIC 6—Evaluation of economic costs and benefits of methods for reducing nutrient loads to the Gulf of Mexico. In addition to evaluating the social and economic costs and benefits of the methods identified in topic 5, this analysis includes an assessment of various incentive programs and any anticipated fiscal benefits generated for those attempting to reduce sources.

The reports may be reached via either the EPA or NOS websites: at <http://www.epa.gov/msbasin/>; <http://www.nos.noaa.gov/Products/pubs__online.html>; or contact those listed above for information on how to obtain the reports.

Dated: April 29, 1999

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–11165 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–2]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement (''Purchaser Agreement'') associated with the McAdoo Associates Superfund Site, Blaine Street Location in the Borough of McAdoo, Schuylkill County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Albert P. Mertz, More Mobility Inc. and Mobility Distributing, Inc. (''Purchasers''). The settlement would require the Purchasers to, among other things, pay $500.00 within thirty (30) days of the effective date of the Purchaser Agreement to the EPA Hazardous Substances Superfund and provide access to EPA and the Commonwealth of Pennsylvania and all other persons performing response actions under EPA or Commonwealth of Pennsylvania oversight.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before June 3, 1999.

AVAILABILITY: The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''McAdoo Associates Superfund Site, Blaine Street Location Proposed Purchaser Agreement'' and ''EPA Docket No. III–98–080–DC,'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (3RC00), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2648.

Dated: April 21, 1999.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–11166 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled Center of Excellence for Information Technology (CEIT)

AGENCY: Office of Information Technology, GSA.

ACTION: Notice of request for approval of a new information collection entitled Center of Excellence for Information Technology (CEIT).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Center of Excellence for Information Technology (CEIT).

DATES: Comment Due Date: June 3, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Pat Smith, Office of Information Technology, (202) 501–0837.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget to approve a new information collection concerning Center of Excellence for Information Technology (CEIT). The Center of Excellence for Information Technology (CEIT) will serve as a clearinghouse for best practices in information technology applications in both the public and private sectors. Current plans are to partner with leading Information Technology (IT) industry companies to establish a Center that provides innovate demonstrations of technology at work. Initial IT applications featured in the CEIT will focus on the use of web-enabled technologies to perform administrative functions and to deliver interagency transaction-based services through an Access America Seniors website.

B. Annual Reporting Burden

Respondents: 400; annual responses: 400; average hours per response: .15; burden hours: 60.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 27, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–11109 Filed 5–3–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 9:00 a.m.-5:00 p.m., May 19, 1999; 9:00 a.m.-5:00 p.m., May 20, 1990.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: At this meeting, the Subcommittee will hear panel presentations on selected confidentiality issues. On the first day, a panel discussion is planned on the flow of health information between employers and insurers and related issues of data access and confidentiality. A second panel of privacy advocates will discuss their views on these topics. On the second day, the Subcommittee will hear a panel discussion of pharmacy benefit management firms and their information practices.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Gail Horlick, M.S.W., J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410)–786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Dated: April 28, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–11123 Filed 5–3–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Chang-Fen Huang, Ph.D., State University of New York at Stony Brook (SUNY–SB): Based on an investigation conducted by SUNY–SB dated December 18, 1997, ORI finds that Dr. Huang, former graduate student, Department of Biochemistry, SUNY–SB, engaged in scientific misconduct in the reporting and conducting of research supported by a grant from the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH).

Specifically, ORI finds that:

(1) Dr. Huang falsely mislabeled and relabeled six autoradiographs of Northern blots (ARG) that she had obtained from earlier unrelated experiments to make them appear to have come from several different and separate experiments.

(2) For one of the sets noted in (1) above, Dr. Huang falsified and misrepresented portions of the ARG in panel B of figure 1, in C.F. Huang et al. ''Depolarization-transcription signals in skeletal muscle use calcium flux through L channels, but bypass the sarcoplasmic reticulum.'' Neuron 13:167–177, 1994. Figure 1B purported to show the effect of electrical activity on the expression of genes for subunits of the acetyl choline receptor, but actually used data derived from a separate and unrelated experiment showing the effect of phorbol esters on the expression of the myogenin gene that had been previously reported in an unrelated publication. The publication was retracted at Neuron 13(1):1294, 1998.

(3) For one of the sets noted in (1) above, Dr. Huang falsified and misrepresented Figure VII/7, an aggregate ARG, on page 159 of her dissertation, ''Studies of the Signaling Pathway Coupling Membrane Depolarization and AchR Gene Inactivation in Chick Skeletal Muscle,'' December 1993. The figure reported the effect of a set of calcium-active agents on the sarcoplasmic reticulum that were different from those studied for the original ARG.

Dr. Huang has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning April 20, 1999:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) to exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–11120 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nomination of Topics for Evidence-based Practice Centers (EPCs)

The Agency for Health Care Policy and Research (AHCPR) invites a third round of nominations of topics for evidence reports and technology assessments relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions. AHCPR's first request for topic nominations was published in the **Federal Register** on December 23, 1996. AHCPR's second request was published in the **Federal Register** on November 28, 1997.

With this third round of nominations, AHCPR is expanding the range of topics that may be submitted. In addition to nominations of topics for assessments and evidence reports on specific heath care technologies and medical

procedures, including alternative or complementary therapies, AHCPR is, for the first time, inviting nominations of topics for assessments and evidence reports relating to organization and financing of health care. Section A of this announcement describes the nomination process and selection criteria for clinical topics. Section B of this announcement describes the nomination process and selection criteria for organizational and financial topics.

AHCPR serves as a science partner with private-sector and other public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to speed the translation of evidence-based research findings into improved health care. AHCPR awards task order contracts to its Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses on high-priority topics. The EPCs produce science syntheses—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, and other strategies to improve the quality of health care and make decisions related to the effectiveness or appropriateness of specific health care technologies.

As the body of scientific studies related to the organization and financing of health care grows, evidence reports and scientific syntheses of these studies can provide health system organizations with a scientific foundation for developing system-wide policies and practices. These reports might, for example, address and evaluate innovations in the delivery of care, the organization of health care systems, or provide payment mechanisms.

As a result of nominations received in response to AHCPR's December 1996 **Federal Register** notice, EPCs developed evidence reports or technology assessments on: (1) testosterone suppression treatment of prostatic cancer; (2) evaluation of cervical cytology; (3) diagnosis and treatment of dysphagia/swallowing problems in the elderly; (4) evaluation and treatment of new onset of atrial fibrillation in the elderly; (5) diagnosis of sleep apnea; (6) treatment of attention deficit and hyperactivity disorder; (7) diagnosis and treatment of acute sinusitis; (8) rehabilitation of persons with traumatic brain injury; (9) prevention and management of urinary tract infections in paralyzed persons; (10) pharmacotherapy for alcohol dependence; (11) management of stable angina; and, (12) treatment of depression with new drugs.

As a result of nominations received in response to the November 1997 **Federal Register** notice, the EPCs are developing evidence reports or technology assessments on: (1) use of erythropoietin in oncology and hematology; (2) management of chronic obstructive pulmonary disease; (3) criteria to determine disability for patients with chronic renal disease; (4) treatment of acne; (5) management of anesthesia during cataract surgery; (6) criteria for weaning from mechanical ventilation; (7) management of cancer pain; (8) evaluation of technologies for identifying acute cardiac ischemia in emergency departments; (9) management of hypertension during pregnancy; (10) management of acute otitis media; (11) management of pre-term labor; (12) prevention of venous thromboembolism after injury; (13) management of unstable angina; (14) criteria for referral of patients with epilepsy; and, (15) alternative and complementary medicine: use of garlic in prevention of cardiovascular disease and cancer; and use of silybum marianum in treatment of liver disease and cirrhosis.

Background

Under Title IX of the Public Health Service Act, AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research and through promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and promotion of improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–6 and 1320b–12).

Evidence-based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, patient advocacy groups, and consumer organizations. Such topics may include the prevention, diagnosis and/or treatment of particular diseases or health conditions including, where appropriate, the use of alternative/complementary therapies, as well as the appropriate use of more commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care. AHCPR widely disseminates the evidence reports and technology assessments produced by the EPCs, both electronically and in print.

The AHCPR will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate. Nominators of selected topics are expected to serve as resources to EPCs as they develop evidence reports and technology assessments. Nominators may also serve as peer reviewers of draft evidence reports and assessments.

The processes that AHCPR employs to select topics nominated for analyses by the EPCs are described below. The topics selected will complement AHCPR's efforts to build a balanced portfolio of evidence reports. Section A addresses AHCPR's nomination process and selection criteria for clinical topics. Section B addresses AHCPR's nomination process and selection criteria for organization and financing topics.

Section A: Clinical Topics

Nomination Process for Clinical Topics

Nominations of clinical topics for AHCPR evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed so that within 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, draft reports and assessments circulated for external peer review, and final evidence reports or technology assessments produced. Topics selected will not duplicate current and widely available clinical practice guidelines or technology assessments, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the importance and clinical relevance of the topic. Nominators also should indicate how the evidence report or technology assessment will be utilized by their professional practices or organizations. Nomination information should include:

- Defined condition, target population, and three to five specific questions to be answered.
- Incidence or prevalence, and indication of the disease burden (e.g., mortality, morbidity, functional impairment, diminution of quality of life) in the U.S. general population or in subpopulations (e.g., Medicare or

Medicaid populations, minorities, women or children). For prevalence, the number of cases in the U.S. and the number affected per 1,000 persons in the general U.S. population should be provided. For incidence, the number of new cases per 100,000 a year should be provided.

- Costs associated with the clinical condition, procedure, treatment, or technology, including the number of people needing care, high unit cost of care, high indirect costs, or average reimbursed amounts for diagnostic and therapeutic interventions (e.g., average U.S. costs and number of persons who receive care for diagnosis or treatment in a year, citing ICD9–CM and CPT codes if possible).
- Potential of the evidence report or technology assessment to decrease health care costs or to improve health status or clinical outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- Significant variations in practice patterns and/or results.
- Indication by nominator's organization and/or relevant professional organizations of intended use of the report or assessment (e.g., rapid use of the report or assessment to develop or update clinical practice guidelines, educational programs, and other quality improvement tools, or payment or coverage policies about a particular condition).

Selection Criteria for Clinical Topics

Selection criteria for AHCPR evidence report and technology assessment topics include: (1) High incidence or prevalence in the general population or in subpopulations, including racial and ethnic minorities, as well as pediatric and elderly populations; (2) significance for the needs of the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) potential to inform and improve patient or provider decisionmaking; (6) potential to reduce clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the study or analysis of the topic; (8) potential opportunities for rapid implementation; (9) complementarity to other evidence reports to support AHCPR's effort to build a balanced portfolio of evidence reports and technology assessments; and (10) indication that the nominating organization and/or relevant professional organizations would use the report or assessment on the topic nominated to develop or update a clinical practice guideline, other quality improvement tools, or coverage decision policies.

Section B: Organization and Financing Topics

Nomination Process for Organization and Financing Topics

Nominations of organization and financing topics for AHCPR research syntheses and evidence reports should focus on specific aspects of health care organization and finance, particularly with regard to their impact on health care outcomes and quality. Potential topics should be carefully defined and circumscribed so that within 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, draft reports circulated for external peer review, and final evidence reports produced. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the importance and relevance of the topic. Nominators also should indicate how the evidence report could be used by public and private decision-makers to improve clinical care delivery and health outcomes. Nomination information should include:

- Defined organizational/financial arrangement or structure impacting quality, outcomes, cost, access or use, along with three to five specific questions to be answered.
- If appropriate, description of how the organizational or financial arrangement or structure is particularly relevant to delivery of care for specific vulnerable populations (e.g., children, persons with chronic disease) or certain communities (e.g., rural areas).
- Costs potentially affected by the organizational or financial arrangement, to the extent they can be quantified.
- Potential of the evidence report to decrease health care costs or to improve health status or outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- References to significant variation in delivery and financing patterns and/or results, and related controversies.
- Indication of why there is controversy or the need to evaluate outcomes and impact of the organizational or financing intervention.
- Indication by nominator's organization of intended use of an evidence report on this topic.

Selection Criteria for Organization and Financing Topics

Topics for AHCPR evidence reports related to the organization and financing of care that will be of greatest interest are those that have one or more of the following characteristics: (1) Uncertainty about the impact of the subject organizational or financing strategy; (2) potential for the organizational or financing strategy or the proposed research synthesis to significantly affect aggregate health care costs, outcomes, or quality; (3) policy-relevant to Medicare, Medicaid, and/or other Federal and State health programs; (4) relevant to vulnerable populations, including racial and ethnic minorities, and particular communities, such as rural areas; (5) available scientific data to support the study or analysis of the topic; and, (6) potential for rapid incorporation into managerial or policy decisionmaking.

Examples of topics related to the organization and financing of care include: (1) Use of formularies by hospitals and MCO's; (2) impact of pre-hospital care for coronary disease; (3) impact of gatekeeper systems; (4) effect of stepdown units on quality and cost of care; (5) effect of risk-sharing payment schemes for physicians; (6) effect of co-payment and deductibles on care sought and received.

Materials Submission and Deadline

Nominations may be in the form of a letter. To be considered for the next group of evidence reports and technology assessments, topic nominations should be submitted by July 6, 1999 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852.

AHCPR encourages topic nominations from professional societies and organizations comprised of members of minority populations, as well as nomination of topics that have significant impact on the health status of women, children, ethnic and racial populations.

In addition to publication of requests for topic nominations in the **Federal Register**, AHCPR also accepts nominations on an ongoing basis at the above address for EPC evidence reports and technology assessments.

All responses will be available for public inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHCPR will not reply to individual responses, but will consider all nominations in selecting topics. Topics selected will be announced, from time to time, in the **Federal Register** and AHCPR press releases.

For Additional Information

Additional information about topic nominations can be obtained by contacting: Jacqueline Besteman, EPC Project Officer, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852; telephone (301) 594–4017; E-mail address: jbestema@ahcpr.gov.

Dated: April 27, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–11127 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99049]

National Sexual Violence Resource Center (NSVRC); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted to establish a National Sexual Violence Resource Center (NSVRC) for fiscal year (FY) 1999. This program addresses the priority area of Violent and Abusive Behavior.

The purposes of the program are to:

1. Strengthen the existing support system serving sexual assault survivors;
2. Provide leadership in the prevention of sexual violence;
3. Provide comprehensive information and resources, policy analysis and development; and
4. Provide technical assistance and professional consultation to sexual assault programs, national, State and local organizations, community volunteers, and the media designed to enhance community response to and prevention of sexual violence.

B. Eligible Applicants

Applications may be submitted by National sexual assault coalitions and State sexual assault coalitions. National sexual assault coalitions are membership organizations of state sexual assault coalitions which work to end sexual violence through public awareness, education, and public policy advocacy. State sexual assault coalitions are State level organizations that represent and are supported by the majority of the rape crisis centers and sexual assault programs in a given state. National and State coalitions both have a 501 (c) (3) designation and work with State and national systems (e.g. criminal justice, health, etc.) for sexual assault survivors.

Competition is limited to National and State sexual assault coalitions because:

1. The resource center will provide an infrastructure that supports the field of prevention of sexual violence that has been characterized by a lack of resources to adequately address the issue;
2. The resource center will provide immediate access to information and resources needed by people who work with women who are victims of violence;
3. The Senate appropriation committee encourages CDC to supplement state sexual assault coalitions' rape prevention and education efforts and to support state sexual assault coalitions focused on ending sexual violence; and
4. State sexual assault coalitions have a long history of providing victim services, educating students, training various groups including professionals and increasing public awareness of sexual violence.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 1, 1999 and will be made for a 12-month budget period within a project period of up to five (5) years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Applications with year 1 annual budgets that exceed $700,000 (total direct and indirect costs) will be determined as ineligible and returned to the applicant.

Use of Funds

a. Allowable Uses of Funds:

Funds may be used for planning, developing, implementing, and evaluating projects. Accordingly, funds can be used to support personnel, purchase furniture appropriate to the establishment of this center, and to purchase hardware and software required to implement the project. Applicants may enter into contractual agreements to purchase goods and services, or to support collaborative activities, but the applicant must retain proper stewardship over funds and responsibility for tasks associated with the project.

b. Prohibited Uses of Funds:

Funds for this project may not be used for construction, renovation, the lease of passenger vehicles, or supplanting current applicant expenditures.

D. Program Requirements

The applicant requirements:

1. Provide technical assistance and training to assist organizations, programs and communities to adapt available resources to meet local needs.
2. Establish and maintain (for public use) a central resource of materials that addresses a wide range of sexual violence issues.
3. Develop systems for providing an assortment of information relative to sexual violence prevention.
4. Establish and maintain a full working partnership with an academic institution, research institution, or a consultant with demonstrated scientific expertise in the area of sexual violence programs.
5. Establish and maintain a full working partnership with appropriate National/State Sexual Assault Coalitions.
6. Provide a full-time manager and other staff as appropriate.
7. Develop and implement a mechanism(s) for assessing the informational and data needs of the diverse populations working in the field of sexual violence prevention.
8. Provide a detailed evaluation plan that will document program process, effectiveness, impact, or outcomes.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages, excluding the abstract, budget justification, and attachments

(i.e., letters of support, data collections forms, resumes, etc.) All material must be typewritten, double-spaced, with type NO SMALLER THAN 12 CPI, on 8.5″ x 11″ paper, with at least 1″ margins, headings and footers, unbound, and printed on one side only. Do not include any pamphlets, spiral or bound materials.

Applicants must explain in detail how the proposal will accomplish the goals of this announcement within a project period not to exceed five years and must include the following sections:

1. Abstract

A one-page summary of the proposed National Sexual Violence Resource Center, outlining the goals and objectives, the working partners and collaborators, resources to be provided, the desired outcomes, and program evaluation plan.

2. Background and Need

a. The applicant should clearly describe the need for a National Sexual Violence Resource Center. This description should include the applicants' vision for this resource center, their understanding of, access to, and the exchange of information and resources, technical assistance and professional consultation to sexual assault programs, national, State, and local organizations, community volunteers, the media, geographically and culturally diverse communities, racial and ethnic communities, as well as those communities in which English is not the primary language to enhance community response to and prevention of sexual violence.

b. Include in this section the background and need for information regarding racial/ethnic, and cultural communities, people with disabilities, etc. who have experienced sexual violence.

3. Goals and Objectives

a. The goals and objectives should be specific, time-phased, measurable and achievable.

b. The goals and objectives should describe the program activities that are consistent with accomplishing the Center's goals and objectives, and specifically who among the core staff is responsible for doing what and when.

c. A detailed time line should be provided illustrating concurrent activities.

d. The applicant should clearly describe short term objectives (year 1)and long-term objectives (years 2 through 5) related to the establishment of the national sexual violence resource center.

4. Project Management and Staffing

a. The applicant should provide a description of the key staff, their qualifications and experience in the sexual violence field, and the role each person will play in designing, implementing, and assessing the NSVRC. The applicant must include a plan for continued contact with the field.

b. The applicant should clearly describe the proposed and or existing relationship of the working partnership with an academic, research institution, or consultant with documented scientific expertise.

c. The applicant should provide resumes or curriculum vitae of key staff, an organizational chart that shows the Center's proposed structure.

d. The applicant should demonstrate that the facilities and resources are sufficient to conduct the Center's activities.

5. Plan of Operation

a. The applicant should demonstrate the ability to identify, document and develop materials for specific program needs.

b. The applicant must demonstrate the ability to provide technical assistance, training, and consultation to improve program administration, service delivery, and to promote the utilization of resources and techniques for program implementation and evaluation.

c. The applicant must demonstrate the ability to develop, and disseminate proposed materials and identify additional areas of research needed to address issues relevant to sexual violence.

d. The applicant should clearly demonstrate a full working partnership with an academic institution, a research institution, or consultant capable of providing the organization with sexual violence prevention expertise.

e. The applicant must demonstrate the ability or experience to deliver highly individualized technical assistance which enables a user to solve a specific problem.

6. Evaluation Plan

a. The applicant should provide a detailed description of the proposed evaluation plan to document program progress and how the proposed plan will measure success in developing a national resource center. The evaluation plan should include progress in meeting program objectives.

b. The applicant should document staff availability, expertise, experience, and capacity to perform the evaluation.

c. The applicant should include a plan for reporting evaluation results and using evaluation information for programmatic decisions. Indicate willingness to participate in a process of continuous improvement which may require frequent reviews of progress and processes utilized, remediation of identified barriers, and adoption of modified methods and measures.

7. Collaboration

The applicant must show evidence of collaboration with National/State sexual assault coalitions. Include letters of support or memoranda of understanding that precisely state the nature of past and proposed collaboration and the specific contribution the collaborator intends to make to the Center should be fully described.

8. Proposed Budget

The applicant must provide a detailed proposed first-year budget and narrative justification. The budget should include cost for travel for 2 project staff to attend at least 2 meetings in Atlanta with CDC staff in the first year of the program. The budget request should be reasonable and consistent with the intended use of cooperative agreement funds.

F. Submission and Deadline

Submit one original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before June 28, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date; or

b. Sent on or before the deadline date, and received in time for orderly review and processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in F.1.a. or F.1.b. above, are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria (maximum 100 total Points):

1. Background and Need (10 Points)

The extent to which the applicant clearly describes the need for a National Sexual Violence Resource Center, demonstrates an understanding of, access to, and the exchange of information and resources, technical assistance and professional consultation to sexual assault programs, national, state, and local organizations, community volunteers, the media, racial ethnic and language minority communities to enhance community response to and prevention of sexual violence and its sequelae.

2. Goals and Objectives (15 Points)

a. The extent to which the applicant's goals are clearly documented and objectives are time-phased, specific, measurable, and achievable.

b. The extent to which the objectives demonstrate a results-oriented program with specific activities that are consistent with and appropriate to the stated outcome.

c. The quality and specificity of the applicant's proposed plan to establish and maintain a resource center for sexual violence.

d. The ability of the applicant to achieve the stated program objectives and for successfully operating the resource center.

e. The extent to which the applicant can meet the information needs identified by center staff, collaborators, and consumers.

f. The extent to which the proposed activities are realistic and meet the intended purposes of the funding, the description of the program components, the evidence of applicability to potential consumers, an explanation of the center's capacity for producing the desired outcomes.

g. The availability of the staff and facilities to carry out the described program plan.

3. Project Management and Staffing (20 Points)

a. The extent to which the project staff are clearly described, appropriately assigned, and have appropriate skills and experiences.

b. The extent to which the applicant has the capacity and facilities to maintain a national sexual violence resource center.

c. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position.

4. Plan of Operation (20 Points)

a. The quality and specificity of the applicant's proposed plan to establish the center; the ability of the applicant to achieve stated program goals and objectives, and the extent to which the proposed activities are realistic and meet the intended purposes of the funding.

b. The extent to which the applicant documents a full working relationship with a academic, research institution, or consultant to provide scientific expertise around the synthesis of literature reviews, research findings and evaluation, and documented experience to draw conclusions from research findings.

c. The extent to which the academic institution or research institution staff, or consultant are clearly described, appropriately assigned, and have appropriate skills and experiences.

5. Evaluation Plan (20 Points)

a. The extent to which the applicant provides a detailed description of the methods to be used to evaluate program effectiveness, including what will be evaluated, data to be collected and analyzed, who will perform the evaluation and the time-frame.

b. The extent to which the applicant documents staff availability, expertise, and capacity to evaluate program activities and effectiveness.

6. Collaboration (15 Points)

a. The extent to which the applicant documents evidence of collaboration with organizations such as National/State sexual assault coalitions.

b. The extent to which the applicant documents experience in the management and delivery of resources through various mediums around sexual violence issues.

c. The applicants expertise and capacity to collaborate among a wide spectrum of individuals, representatives of local and State organizations, underserved racial and ethnic communities, and special populations.

7. Proposed Budget (Not scored)

The extent to which the budget is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two (2) copies of

1. Progress reports (semi-annually).

2. Financial status report (FSR), no more than 90 days after the end of each budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application package.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under Sections 301, 393 and 394 of the Public Health Service Act [42 U.S.C. sections 241, 280b–1a, and 280b–2], as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888-GRANTS4(1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of Interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ricky Willis, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99049, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146, Telephone:(770) 488–2719, E-mail address: rqw0@cdc.gov.

For program technical assistance contact: Denise Johnson, Team Leader, or Joyce McCurdy, Acting Assistant Team Leader, Centers for Disease Control and Prevention, National Center

for Injury Prevention and Control, 4770 Buford Highway, NE, Mailstop K–60, Atlanta, GA 30341, Telephone:, (770) 488–4277 (Denise Johnson), (770) 488–4266 (Joyce McCurdy), E-mail addresses: dxj@cdc.gov (Denise Johnson), Jmm6@cdc.gov (Joyce McCurdy).

Dated: April 28, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11098 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99117]

Prevention Research Using Genetic Information To Prevent Disease and Improve Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), Office of Genetics and Disease Prevention, in cooperation with the Office of Prevention Research, Office of the Director, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Prevention Research Using Genetic Information to Prevent Disease and Improve Health.

This program addresses the ''Healthy People 2000'' priority areas of Maternal and Infant Health, Heart Disease and Stroke, Cancer, and Diabetes and Chronic Disabling Conditions.

The purpose of this program is to strengthen science for public health action, collaborate with healthcare partners for prevention, and promote healthy living at every stage of life and is consistent with the implementation of an agency-wide strategic plan for genetics and public health.

The program will provide funding for conducting population-based research to:

1. Assess how risk for disease and disability in well-defined populations is influenced by the interaction of human genetic variation with modifiable risk factors.

2. Ensure that genetic tests and services are incorporated in population-based interventions that promote health and prevent disease and disability.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 1999 to fund two awards. It is expected that the average award will be $350,000 to begin on or about September 30, 1999 for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

The maximum funding level for any award for year one will not exceed $400,000 (including both direct and indirect costs). Applications that exceed the funding cap of $400,000 will be excluded from the competition and returned to the applicant. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds will not be made available to support the provision of direct care, facility or capital outlay. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Programmatic Interests

Immediate programmatic interest is focused on research in two categories:

1. Epidemiologic research that assesses the interaction of modifiable risk factors (e.g., diet, chemical exposures, infections, lifestyle) with known genetic disease risk factors in well-defined populations, and demonstrates how this information can help target disease prevention efforts.

2. Prevention effectiveness research that demonstrates in well defined populations the effectiveness and safety of using genetic information to prevent disease, disability and death by identifying persons at risk and carrying out appropriate interventions.

For examples of research questions meeting these general criteria, see Addendum II (included in application kit).

Proposals for research in either category must address at least one of the five following disease groups, which represent some of the leading causes of mortality, morbidity, and disability in the United States, and which have identifiable genetic and environmental risk factors:

1. Cardiovascular disease.
2. Cancer.
3. Arthritis.
4. Diabetes.
5. Pediatric pulmonary disease (asthma, cystic fibrosis).

Proposals addressing genetic traits (e.g., hemochromatosis) that contribute to development of more than one of these diseases (e.g., cancer, diabetes, and arthritis) will also be considered.

Research studies proposed for either category must be community- or population-based, i.e, based on systematic samples of a population or on population-based registries. Proposals should seek to establish or strengthen collaborative efforts among public, private, and academic partners (e.g., state health departments, health maintenance organizations, and schools of public health) that can be sustained for subsequent research and program development. Proposals should also emphasize the potential applications of the research outcomes in guiding disease prevention program activities. An important component of such efforts is a commitment to training in the use of genetic information for public health and for developing community-based capacity for prevention program development.

E. Cooperative Activities

The recipient will be responsible for conducting the activities under 1., below, and CDC will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Develop a comprehensive protocol and plan for implementing either epidemiologic or prevention effectiveness research.

b. Establish procedures to maintain the rights and confidentiality of all study participants including the identification of applicable laws.

c. Disseminate results of research studies through paper and electronic publications and presentations.

d. Serve as a resource for professional and public information and education in use of genetic information for public health.

e. Develop collaboration among public, private, and academic partners

that can be sustained for subsequent research and program development (e.g., state health departments, health maintenance organizations, schools of public health)

f. Participate in meetings with CDC and other investigators and relevant public health officials.

2. CDC Activities

a. Provide up-to-date scientific information.

b. Provide liaison among grantees and collaborating CDC Centers.

c. Provide technical guidance in the development of study protocols, consent forms, and data collection forms.

d. Coordinate research activities among sites, when appropriate.

e. Convene meetings among collaborators to discuss preliminary findings and improve research outcomes.

F. Application Content

1. A description of all the project staff regardless of their funding source. The description should include title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of the salary to be paid by the cooperative agreement.

2. A table of contents showing the page location of relevant application contents.

3. A detailed budget for year one of the cooperative agreement.

4. Budget projections for subsequent years.

5. A biographical sketch for the Principal Investigator/Program Director and for all key personnel.

6. A description of the involvement of other entities that will relate to the proposed project, if applicable, including public, private, and academic partners. The description should include evidence of support and a clear statement of roles.

7. A description of the performance sites and capabilities.

8. A description of those activities conducted by the applicant related to, but not supported by the cooperative agreement.

9. A plan that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to the Purpose of the Announcement.

10. Specific, measurable, and time-framed objectives.

11. A detailed plan describing the methods by which the objectives will be achieved.

12. A comprehensive evaluation plan.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside review groups. To execute this option: on the original and five copies of the application (See Submission and Deadline), the applicant must use asterisks to indicate the individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions the Errata Instruction sheet for PHS 398). Forms are in the application Kit. On or before June 30, 1999, submit the application to:

Mattie Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99117, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applications will be subjected to a preliminary evaluation (triage) by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Prevention Research Using Genetic Information to Prevent Disease and Improve Health, Program Announcement #99117, to determine if the application is of sufficient technical and scientific merit to warrant further review. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

The primary review of all proposals will include:

1. The specific aims of the research project, i.e., the broad long-term objectives and the intended outcome of the specific research proposal in relation to the targeted areas described (see Programmatic Interests.)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and the specific identification of the knowledge gaps in the use of genetic information in public health, which the proposal intends to address.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research.

4. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

5. The extent to which the research findings will lead to identifying and targeting modifiable risk factors that interact with genetic factors in causing disease, or will demonstrate the prevention effectiveness of using genetic information to prevent disease.

6. The extent to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

7. A principal investigator who has conducted, evaluated, and published genetics research in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

8. Qualifications and demonstrated experience on the applicant's project team in conducting relevant public health genetics studies and the appropriateness of personnel to accomplish the proposed activities.

9. Effective and well-defined working relationships within the performing organization and with other interested, public, private, and academic partners (as evidenced by letters detailing the nature and the extent of the involvement).

10. Adequacy of existing and proposed facilities and resources and the ability to carry out a research project on the use of genetics information in prevention research related to the specified disease groups (see Programmatic Interests).

11. Gender and Minority Issues—The extent of plans to adequately include both sexes and minorities and their subgroups (as appropriate with the

scientific goals of the project), and to ensure the recruitment and retention of human subjects.

12. Human Subjects—The quality of procedures for the protection of human subjects, and plans for documenting all procedures for compliance with applicable published regulations.

The secondary review will be conducted by a panel of Senior Federal Officials based on the ranked proposals to assure maximal impact and balance of proposed research. The factors to be considered will include:

1. The results of the primary review including the proposal's priority score as the primary factor in the selection process.
2. The match between the proposal and the program announcement and programmatic interests.
3. The relevance and balance of proposed research relative to CDC programs and priorities.
4. The significance of the proposed activities in relation to the priorities and objectives stated in ''Health People 2000''.
5. Geographic balance and budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. Annual progress reports,
2. Financial status report, no more that 90 days after the end of the budget period, and
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist listed in Section K ''Where to Obtain Additional Information'.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application package.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3—Public Health System Reporting Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2000
AR–12—Lobbying Restrictions

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 [42U.S.C.241 and 247b] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov. Please refer to Program Announcement Number 99117 when requesting information. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Mattie Jackson, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2718, Internet address: mij3@cdc.gov

For program technical assistance contact: Marta Gwinn, M.D., M.P.H., Office of Genetics and Disease Prevention, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–28, Atlanta, Georgia 30341–3724, telephone (770) 488–3235, Internet address: mlg1@cdc.gov

Dated: April 28, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11097 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Radiation Studies and Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Radiation Studies and Research, in response to Program Announcement 99020.

Times and Dates: 8 a.m.—9 a.m., May 19, 1999 (Open); 9 a.m.—6 p.m., May 19, 1999 (Closed); 8 a.m.—5 p.m., May 20, 1999 (Closed).

Place: Centers for Disease Control and Prevention, Chamblee Campus, Building 101, (Room 1301B on May 19; Room 3002 on May 20), 4770 Buford Highway, NE, Atlanta, GA.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 99020.

Contact Person For More Information: C.M. Wood, CDC, NCEH, Chamblee Campus, Building 101, 4770 Buford Highway, NE, Atlanta, GA., phone 770/488–7642.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 28, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–11096 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Assessment of Preclinical Reproductive Toxicity Data; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss an approach for the integrative assessment of preclinical reproductive toxicity findings and other information for pharmaceuticals. The purpose of the meeting is to provide information on the agency's approach, using several pharmaceutical data sets, and to invite members of the public to provide comments on the utility of the approach. The agency intends to consider feedback from the meeting in the development of guidance for integrative assessments of pharmaceutical reproductive risk.

DATES: The public meeting will be held on June 24, 1999, from 9 a.m. to 4 p.m.

Submit registration information by June 11, 1999.

ADDRESSES: The public meeting will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5482.

SUPPLEMENTARY INFORMATION:

Registration. Although there is no fee, preregistration by June 11, 1999, is required for all attendees at this meeting. Participation is limited to the first 75 registrants outside FDA and is also restricted within FDA due to limited meeting space. Persons interested in attending the meeting should register via e-mail to ''wedge@cder.fda.gov'' using the registration form on the Center for Drug Evaluation and Research home page ''http://www.fda.gov/cder'' or, if e-mail is not available, fax their registration information (including name, affiliation, address, telephone, fax number, and e-mail address) to 301–827–6801, ATTN: Kimberly L. Topper. Interested persons may also register by mailing the registration information to the contact person identified previously.

Building Location and Admittance. The building at 5630 Fishers Lane is the former Social Services Building located next to the Parklawn Building. Please use the lower entrance, which faces Parklawn Dr. Visitor badges for nonagency participants will be held at the guard station at the entrance to the building. Participants will need picture identification to pick up their badge.

Parking. There is no public parking at the building at 5630 Fishers Lane. A public parking lot (for a fee) is located on Fishers Lane across from the Parklawn building, and additional public parking (for a fee) is available at the Twinbrook Metro station located several blocks to the west.

Agenda. An agenda for the public meeting will be available 2 weeks before the meeting, via the Internet using the World Wide Web (WWW). Connect to the CDER home page at ''http://www.fda.gov/cder'' and go to the ''What's Happening'' section.

Dated: April 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11122 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0254]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, or a previously approved collection for which approval has expired.

Title of Information Collection: National Medicare Education Program (NMEP) Community Survey of Medicare Beneficiaries.

Form No.: HCFA–R–0254 (OMB# 0938–0738).

Use: A survey of Medicare beneficiaries in six communities will be conducted to monitor the NMEP implementation. Beneficiaries in these same communities were interviewed in September 1998 and February 1999. This approach will gather information on changes in: awareness of Medicare+Choice expansions and options; knowledge about Medicare and the Medicare+Choice options; where beneficiaries go to find more information; and whether they are aware of the many information resources available to them; and satisfaction with their information/knowledge.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 2,400.

Total Annual Responses: 2,400.

Total Annual Hours: 600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11150 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–138]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria and Supporting Regulations in 42 CFR 412.256.

Form No.: HCFA–R–138.

Use: This regulation sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This regulation also establishes procedural guidelines for the MGCRB.

Frequency: Annually.

Affected Public: Business or other for profit, and not for profit institutions.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Total Annual Hours Requested: 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11152 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–209 and HCFA–R–245]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

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 submitted two Outcome and Assessment Information Set (OASIS) information collections to the Office of Management and Budget (OMB) for emergency review and approval. On January 25, 1999, HCFA requested OMB review and approval of the OASIS collections within 16 working days from the date of publication of the OASIS regulations. However, these information collections are still pending OMB approval. Therefore, we are publishing this notice as a means of notifying the public that these information collections have not yet been approved by OMB and are not yet in effect. When the clearances referenced below are obtained, HCFA will publish a notice in the **Federal Register**, announcing the approval of these information collections.

OASIS Data Collection and Use (HCFA Collection Number: HCFA–R–245)

On January 25, 1999, we published a regulation (HCFA–3007–F, 64 FR 3764) requiring all home health agencies (HHAs) participating in the Medicare/Medicaid program to collect data using a standardized assessment instrument, Outcome and Assessment Information Set (OASIS), for all patients. This requirement was in accordance with section 1891 of the Social Security Act, and finalized a proposed rule published March 10, 1997 (62 FR 11004). The goal of such mandatory collection and use was so that HHAs could improve the quality of their own services to patients. Mandatory collection and use by HHAs was to begin on February 24, 1999.

In order for this mandate to be valid, we still need to obtain appropriate clearances under the Paperwork Reduction Act. The completion of this activity has been delayed, thus delaying the requirement that HHAs must collect and use the OASIS data set as part of their comprehensive assessment process. Upon successful completion, we will issue a notification on the HCFA Internet site (http://hcfa.gov) and publish a notice to this effect in the **Federal Register**.

In the meantime, we are not requiring HHAs to collect and use the OASIS instrument. HHAs that were not meeting the requirements on or after the February 24 effective date will not be held out of compliance. Of course, given that the instrument was designed to be useful to HHAs to assess and improve the care they furnish, they may wish to use the OASIS instrument for their own purposes.

Encoding and Transmission of OASIS Data (HCFA Collection Number: HCFA–R–209)

On January 25, 1999, we published an interim final regulation (HCFA–3006–IFC, 64 FR 3748) mandating that all HHAs participating in the Medicare/Medicaid program encode (that is, data enter) OASIS information in a standard format and transmit it to HCFA as a condition of participation. Encoding was to begin on March 26th and data transmission to the States on April 26th.

In order for this mandate to be valid, we still need to obtain appropriate clearances under the Paperwork Reduction Act, prepare and provide an individual Privacy Act notice for patients, and publish a Privacy Act notice of the existence and character of the OASIS system of records. The completion of these activities has been delayed, thus delaying the requirement that HHAs encode and transmit OASIS data. Upon their successful completion, we will issue a notification on the HCFA Internet site (http://hcfa.gov) and publish a notice to this effect in the **Federal Register**.

In the meantime, we are not requiring HHAs to encode and transmit OASIS data. HHAs that were not meeting the requirements on or after the above effective dates will not be held out of compliance.

Dated: April 28, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11059 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–180]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title of Information Collection: Field Testing of the Uniform Needs Assessment Instrument (UNAI): Small-Scale Trial—Phase 2.

Form No.: HCFA–R–180 (OMB# 0938–0680).

Use: In testing, the Uniform Needs Assessment Instrument (UNAI) will be used to assess the needs of all patients being discharged from Medicare-certified hospitals who are identified, through use of a screener, as needing extensive hospital discharge planning and post-care. Dual assessments will be performed to assess inter-rater reliability. The UNAI is intended to help ensure appropriate post acute care and continuity of care between acute, post-acute and long-term care by transmitting key information to patients, families, and post acute care providers on the status and care needs of patients at the time of acute care discharge. The debriefing of discharge planners will examine the feasibility, burden, and utility of UNAI items and their view of the likely impact on the quality of discharge planning and continuity of care. The goal is to help HCFA determine whether such a system would improve quality of care for Medicare beneficiaries.

Frequency: On occasion.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Number of Respondents: 500.

Total Annual Responses: 720.

Total Annual Hours: 847.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Dated: April 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11149 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0276]

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 the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with the Balanced Budget Act of 1997 (Pub. L. 105–33). We cannot reasonably comply with the normal clearance procedures because Medicare & You 2000 (HCFA–R–0276), is mandated to send information to Medicare beneficiaries at least 15 days before a required November coordinated election period. Therefore, Medicare & You 2000 must be mailed no later than October 15 to ensure receipt. However, due to the volume (35,000,000) of this nationwide mailing, and for the books to be ready for mail by late September, they must be at the printers in June 1999. Waiting for the regular clearance process would not allow for the feedback cards to be printed in conjunction with Medicare & You 2000.

HCFA is requesting OMB review and approval of this collection within 15 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 (14) 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 Request: New collection.

Title of Information Collection: Medicare & You 2000 Feedback Postcard.

HCFA Form Number: Enclosure to HCFA–R–0276 (OMB approval #: 0938–NEW).

Use: The purpose of this collection is post-distribution testing. This feedback postcard will be printed with Medicare & You 2000. This is the primary vehicle for presenting Medicare information to

beneficiaries. Each household with up to 4 Medicare beneficiaries will receive one book. Households with over 4 beneficiaries will have one book sent to each beneficiary. (It is assumed these may be nursing homes/care facilities.) The beneficiaries have the option of completing the postcard, which will provide HCFA with valuable information that will assist in improving future versions of the publication.

Frequency: Annual.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Gov.

Number of Respondents: 35,000,000 cards to be mailed with Medicare & You 2000.

Total Annual Responses: Estimated 5% (1,750,000).

Total Annual Burden Hours: 145,834.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, 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 (14) working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415, Attn: Louis Blank HCFA–R–0276

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: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11151 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers),

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 403–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800

(formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–11190 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Grant Award to Pace/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS

ACTION: Availability of grant funds for Pace/Orchard Place-Child Guidance, Inc. to supplement the substance abuse prevention program for youth at risk for gang involvement and/or first involvement in juvenile with a family strengthening component.

SUMMARY: This notice is to inform the public of a planned $250,000 grant award to Pace/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa to support the Iowa Youth Substance Abuse Prevention Community-Based Initiative. This is not a formal request for applications; assistance will be provided only to Pace/Orchard Place-Child Guidance, Inc., in Des Moines, Iowa. The purpose of the award is to strengthen the families of youth in Des Moines, Iowa at risk for gang involvement and/or first involvement in juvenile court. This program is intended to enhance the substance abuse prevention program provided to these youth, under the prior announcement entitled Iowa Youth Substance Abuse Prevention Community-Based Initiative Guidance for Applicants (GFA) No. SP 97–006, for Davenport and Des Moines, Iowa. This new GFA solicits an application from PACE/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa, to support the existing program SAMHSA first funded in 1997, which expanded substance abuse prevention services among youth gang members in Des Moines and Davenport, Iowa, and encouraged the implementation of substance abuse prevention programs for youth who are vulnerable to gang involvement and the first stages of involvement in juvenile court. CSAP will make this award if the application is recommended for approval by the Initial Review Group and the CSAP National Advisory Council.

This will be a sole source supplement to PACE/Orchard Place-Child guidance, Inc. of Des Moines, Iowa due to the ease of expansion and enhancement of the existing successful program with a family strengthening component, and for the following reasons: (1) PACE/Orchard Place-Child Guidance, Inc. is the only private agency in Iowa with current experience working with substance abuse, delinquency prevention, and truancy reduction in the Des Moines public schools. PACE/Orchard Place-Child Guidance, Inc. is also the primary private provider of preventive services under contract with Polk County Juvenile Court; (2) Iowa is one of a few States with Federal and State coordination in this area. CSAP is currently funding Iowa to serve as a national model for coordinating Federal substance abuse prevention funds and activities with the Iowa Departments of Education, Human Rights, Human Services, Public Safety, the Iowa Governor's Alliance on Substance Abuse and three State universities; and (3) The location of PACE/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa builds on the experiences of this city in addressing substance abuse among gang members. This serves as a relatively confined model, not possible in larger problem areas, of what benefits can accrue when multi-level State collaboration and Federal participation merge in addressing this subgroup.

Therefore PACE/Orchard Place-Child Guidance, Inc. presents unique opportunities to exploit this Federal and State-level coordination in relation to substance abuse prevention services directed at substance abuse among youthful gang members due to its previously established activities in Des Moines.

Consistent with the above discussion, eligibility to apply for funds under this initiative in Iowa is limited to PACE/Orchard Place-Child Guidance, Inc., in Des Moines, Iowa, the only organization currently experienced in working with the required entities thus ensuring no funds need be spent on time lost in bringing the recipient to the required performance level of expertise for this project.

Authority: The cooperative agreement will be made under the authority of section 501(d)(5) of the Public Health Service Act, as amended (42 U.S.C. 290aa). The Catalog of Federal Domestic Assistance number for this program is 93.144.

Contact: Soledad Sambrano, Ph.D., Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9110.

Dated: April 27, 1999.

Richard Kopanda

Executive Officer, SAMHSA

[FR Doc. 99–11188 Filed 5–3–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4417–N–01]

Publication of OIG Program Fraud Alert: Fraud and Abuse in Multifamily Mortgage Insurance Programs

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

ACTION: Notice.

SUMMARY: This notice sets forth an OIG Program Fraud Alert concerning fraud and abuse practices involving the misuse of funds intended to support the operation of multifamily rental housing projects with HUD insured mortgages.

Program Fraud Alerts address national trends in housing fraud. This notice specifically identifies and highlights violations of applicable statutes and HUD requirements involving the misuse or diversion of project assets or income by project owners or management agents, referred to throughout this notice as ''equity skimming.''

FOR FURTHER INFORMATION CONTACT: David J. Derecola, OIG/Office of Audit, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number 202–708–3444, ext. 124. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) issues Program Fraud Alerts based on information it obtains concerning particular fraudulent and abusive practices in HUD programs. Program Fraud Alerts provide the OIG with a means of notifying the public that we have become aware of certain abusive practices which we are pursuing criminally, civilly, or administratively, as appropriate. Program Fraud Alerts also serve as an effective tool to encourage compliance by program participants and provide them an opportunity to examine their own practices.

This is our first Program Fraud Alert to be published in the **Federal Register**. We intend to publish future Program Fraud Alerts in this same manner as a regular part of our dissemination of such information.

With regard to HUD's multifamily housing mortgage insurance programs, this Program Fraud Alert discusses: (1) The nature of HUD's multifamily mortgage insurance programs; (2) the vulnerabilities of multifamily projects to equity skimming; and (3) the use of OIG's anti-fraud initiative—Operation Safe Home—to combat equity skimming.

Program Fraud Alert: Equity Skimming in HUD Multifamily Housing Mortgage Insurance Programs

The OIG was established at the Department of Housing and Urban Development by Congress to identify and eliminate fraud, abuse, and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through independent and objective audits and investigations. To reduce fraud and abuse in HUD's housing programs, the OIG actively pursues the investigation of fraudulent schemes that illegally seek to obtain money or other benefits from these programs. A common practice for illegally taking money from projects is equity skimming. Equity skimming is costly both to the residents of rental housing projects and the taxpayers who subsidize the projects through HUD programs.

Multifamily Housing Mortgage Insurance Programs

The National Housing Act, as amended, authorizes HUD to provide insurance to private lenders who make financing available to owners of multifamily housing projects. In return, the owner agrees to operate the projects in a manner that provides affordable and well maintained housing for tenants and protects the financial interests of the Federal government. As a condition of providing insurance, owners must sign a Regulatory Agreement with HUD. Provisions in the Regulatory Agreement specify that expenditures must be reasonable and necessary to the project and further limit the circumstances and manner in which the owner may take cash or other assets out of the project.

HUD has about $45 billion of insurance in force on mortgage loans for about 15,000 multifamily rental properties. About 75 percent of the FHA-insured projects also receive some form of direct rental subsidy on behalf of tenants from HUD.

What Is Equity Skimming In HUD Multifamily Housing Programs?

Equity skimming is the willful misuse of any part of the rents, assets, proceeds, income or other funds derived from the project covered by the mortgage. The use of project assets or income for other than reasonable operating expenses and necessary repairs, or for the payment of unauthorized distributions to the owner, constitutes a violation of the Regulatory Agreement between the owner and HUD.

The misuse or diversion of project assets and income by owners of insured multifamily projects plays a significant part in the realization of losses to the FHA insurance funds. Further, equity skimming deprives projects of needed funds for repairs and maintenance. This in turn contributes to the financial and physical deterioration of projects and the resultant substandard living conditions for the families who depend upon the Federal government to provide housing. The communities where these projects are located also suffer because they become the breeding ground for crime, violence, and drugs.

What Are the Penalties for Misusing Project Funds?

The use of project funds in violation of the Regulatory Agreement is actionable civilly under the Double Damages Statute, 12 U.S.C. 1715z-4a. The Double Damages Statute permits the government to recover double the value of any assets or income of a project that the court determines to have been used in violation of a Regulatory Agreement, regulation or other form of regulatory control that has been imposed by the Secretary of HUD. The use of assets or income in violation of the regulatory agreement includes any use for which the documentation in the books and accounts does not establish that the use was made for reasonable operating expenses or necessary repair of the project. In addition, the government can recover any and all costs relating to its lawsuit for such damages, including reasonable attorney and auditing fees. The Double Damages Statute considers the use of project assets or income without adequate documentation as a prima facie case that the assets or income were used in violation of the Regulatory Agreement. Consequently, the Double Damages Statute can be used to recover costs that are not adequately documented by the owner. HUD does not have to prove criminal intent. Action can be taken against any person violating the statute which owns a project, as identified in the Regulatory Agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; any beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir, assignee, successor in interest, or agent of any owner.

The misuse of project funds can also be prosecuted as a criminal matter under 12 U.S.C. 1715z–19. Under the criminal statute, equity skimming is defined as willfully using or authorizing ''the use of any part of the rents, assets, proceeds, income or other funds derived from the property for any purpose other than to meet actual or necessary expense * * * in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement, * * *'' Violation of this provision is a felony and can be punished by up to five years imprisonment and fines up to $500,000.

HUD's Anti-Crime Initiative

On February 4, 1994, Vice President Gore, former HUD Secretary Cisneros, Attorney General Reno, former Treasury

Secretary Bentsen, and former National Drug Control Policy Director Brown announced ''OPERATION SAFE HOME'' in a joint press conference at the White House. Three major types of crime affecting HUD programs were targeted by Operation Safe Home:

- Equity skimming in multifamily insured projects;
- Violent crime in public and assisted housing; and
- Fraud in the administration of public housing.

Implemented at HUD by the OIG, Operation Safe Home brings the coordinated resources and expertise of federal, State, and local law enforcement agencies to bear on crime in public and assisted housing. Operation Safe Home represents the OIG's commitment to focus resources on combating areas of high vulnerability and to hold such focus until the vulnerabilities are reduced to an acceptable level—the primary mission of HUD's OIG.

As part of Operation Safe Home, OIG has initiated an aggressive proactive effort to pursue civil litigation and criminal prosecution against owners of multifamily housing projects who misuse project operating funds—the equity skimming effort. A primary objective of the equity skimming effort is to create an enforcement program that provides an effective deterrent and recovery mechanism for the misuse of income and assets at projects having HUD insured mortgages.

OIG identifies and pursues, with the assistance of the U.S. Attorneys and HUD officials, the recovery of funds diverted from projects. Assistant U.S. Attorneys throughout the nation have played a significant role in the success realized by Operation Safe Home in cracking down on equity skimming in HUD's housing programs. Funds recovered in this manner can be directed at improving living conditions for the tenants and minimizing financial losses to HUD.

What Are the More Common Types of Equity Skimming?

If the project is in a non-surplus cash position or is in default, the following actions would most likely constitute equity skimming:

- Distributions or withdrawal of cash;
- Repayment of advances made to the project by the owner/agent;
- Lending funds to owners, partners, affiliates or the management agent;
- Payments of principal and/or interest on any secondary financing unless approved by HUD;
- Splitting of management fees with the project owner;
- Using project funds to purchase equipment or services not for use by the project;
- Paying more for services and supplies than could be procured on the open market;
- Payment of construction or rehabilitation costs from operations that should have been paid from mortgage proceeds;
- Payments to consultants, attorneys, accountants for partnership activities, which are not reasonable and necessary operating expenses of the project; and
- Payments on personal or other business loans.

Project owners and management agents need to be aware of these common ineligible expenditures or misuses of funds, and need to avoid using project funds in these ways. Owners must remember that a project with a HUD insured mortgage is not like other rental properties they may own. Owners agree to certain restrictions regarding the use of project income and assets before becoming involved with HUD insured mortgages. Given the strong civil and criminal penalties which can be imposed for such violations, it is in the best interest of all project owners and agents to ensure adherence to the terms of their Regulatory Agreements.

What To Do if You Suspect Fraud Involving HUD's Multifamily Housing Programs?

If you have information about the misuse of project funds as described above, contact any of the district offices of the Office of Inspector General in HUD listed below, or call the OIG Hotline toll free at 1–800–347–3735 or any local HUD program office.

Office of Inspector General District Offices

New England (CT, MA, ME, NH, RI, VT), District Inspector General for Audit, (617) 565–5259, Special Agent in Charge, (617) 565–5293, Thomas P. O'Neill, Jr., Federal Bldg., 10 Causeway Street, Boston, MA 02222–1092

New York/New Jersey (NJ, NY), District Inspector General for Audit, (212) 264–8000, Special Agent in Charge, (212) 264–8062, 26 Federal Plaza, Suite 3430, New York, NY 10278–0068

Mid Atlantic (DE, MD, PA, VA, WV), District Inspector General for Audit, (215) 656–3401, Special Agent in Charge, (215) 656–3410, The Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107–3390

Southeast/Caribbean AL, FL, GA, KY, MS, NC, PR, SC, TN), District Inspector General for Audit, (404) 331–3369, Special Agent in Charge, (404) 331–5159, Richard B. Russell Federal Bldg., 75 Spring Street, S.W., Atlanta, GA 30303–3388

Midwest (IL, IN, MI, MN, OH, WI), District Inspector General for Audit, (312) 353–7832, Special Agent in Charge, (312) 353–4196, Ralph H. Metcalf Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604–3507

Southwest (AR, LA, NM, OK, TX), District Inspector General for Audit, (817) 978–9309, Special Agent in Charge, (817) 978–9310, P.O. Box 2905, 1600 Trockmorton, Fort Worth, TX 76113–2905

Great Plains (IA, KS, MO, NE), District Inspector General for Audit, (913) 551–5871, Special Agent in Charge, (913) 551–5866, Gateway Tower II, 5th Floor, 400 State Avenue, Kansas City, KS 66101–2406

Rocky Mountains (CO, MT, ND, SD, UT, WY), District Inspector General for Audit, (303) 672–5452, Special Agent in Charge, (303) 672–5449, First Interstate Tower North, 633 Seventeenth Street, Denver, CO 08202–3607

Pacific/Hawaii (AZ, CA, HI, NV), District Inspector General for Audit, (415) 436–8101, Special Agent in Charge, (415) 436–8108, 450 Golden Gate Avenue, P. O. Box 36003, San Francisco, CA 94102–3348

Northwest/Alaska (AK, ID, OR, WA), District Inspector General for Audit, (206) 220–5360, Special Agent in Charge, (206) 220–5380, Seattle Federal Office Bldg., 909 1st Avenue, Suite 200, Seattle, WA 98101–1000

Capital Office (DC), District Inspector General for Audit, (202) 708–2650, Special Agent in Charge, (202) 708–0387, 451 7th Street, S.W., Room 8256, Washington, DC 20410–4500

Dated: March 29, 1999.

Susan Gaffney,

Inspector General.

[FR Doc. 99–11061 Filed 5–3–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Fort Niobrara National Wildlife Refuge and Draft Comprehensive Conservation Plan and Environmental Assessment for Valentine National Wildlife Refuge, Valentine, NE

AGENCY: Fish and Wildlife Service, interior.

ACTION: Notice of availability

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Fort Niobrara National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment and the Valentine National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment. These Plans describes how the FWS intends to manage both the Fort Niobrara and Valentine NWRs for the next 10–15 years.

ADDRESSES: A copy of either of the Plans may be obtained by writing to U.S. Fish and Wildlife Service, Fort Niobrara/Valentine NWR Complex, HC 14, Box 67, Valentine, NE 69201.

The Plans can also be obtained electronically through the U.S. Fish and Wildlife Service Region 6 Land Acquisition and Refuge Planning HomePage. The internet address to access the Plans is as follows: http://www.r6.fws.gov/larp. Follow the link to ''CCP Status in Region 6,'' click on Nebraska on the Region 6 map, and look under the ''Status'' column for links to both the Fort Niobrara and Valentine Draft CCPs.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 634; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Fort Niobrara and Valentine NWRs are located in north central Nebraska. These Plans and their supporting documents outline a vision for the management of each of these Refuges and specify how the largest contiguous block of federally owned Nebraska Sandhills grass-stabilized region can be managed to conserve indigenous wildlife and provide enjoyment to people. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The comment period for these documents will be 60 days from the date of this notice. All comments need to be addressed to: Bernardo Garza, Fish and Wildlife Biologist, Land Acquisition and Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, Colorado 80225.

Dated: April 28, 1999.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 99–11099 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

Geological Survey

Notice of Proposed Cooperative Research and Development Agreement (CRADA) Negotiations Under the Technology Transfer Act of 1986

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with AQUI–S New Zealand LTD to seek U.S. Food and Drug Administration approval of the fish anesthetic AQUI–S for use in public acquaculture, fisheries management, and for use on commercially produced Atlantic salmon.

Inquires: Information on the proposed CRADA is available to the public upon request at the address below. If any other parties are interested in similar activities with the USGS, please contact: William H. Gingerich, 2630 Fanta Reed Road, La Crosse, Wisconsin 54603; Telephone: 608–783–6451; Internet: ''bill__ gringerich@usgs.gov''.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Susan Haseltine,

Associate Chief Biologist for Science, Biological Resources Division.

[FR Doc. 99–11153 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project—Power Division, Arizona Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to adjust the electric power rates for operating and maintaining the Power Division of San Carlos Irrigation Project (SCIP/PD).

DATES: Comments must be submitted on or before June 3, 1999.

ADDRESSES: Written comments on rate adjustments should be sent to: Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS–4513–MIB, Code 210, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wayne Nordwall, Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, AZ 85001; Telephone 602–379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The SCIP/PD has taken the steps necessary to reduce the contract demand in the power supply contract between the Bureau of Indian Affairs, on behalf of SCIP/PD, and the Arizona Public Service Company. This action has resulted in a savings in purchased power costs as of June 1, 1998. This savings is proposed to be passed on in an adjustment to the Schedule No. 2—General Rate schedule.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this proposed rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This proposed rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. § 601(2).

Executive Order 12630

The Department has determined that this proposed rate adjustment does not have significant ''taking'' implications.

Executive Order 12612

The Department has determined that this proposed rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this proposed rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This proposed rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This proposed rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Rate Adjustment

The following illustrates the impact of the proposed rate adjustment:

Present Rate

Rate Schedule No.2—General Rate

(A) Application of Schedule. This schedule applies to single and three phase electric service for all purposes except residences and small, non-commercial users. Unless specifically permitted by the contract, use must be limited to the customer's premises and the power supplied must not be resold. If more than one meter is required by the customer's installation or for the customer's convenience, bills will be independently calculated for each meter.

(B) Monthly Rate.

(1) $13.00 minimum which includes the first 50 kilowatt-hours.

(2) 16.00 cents per kilowatt-hour for the next 350 kilowatt-hours

(3) 10.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.0 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) Additional kilowatt-hours at 5.63 cents per kilowatt-hour, less a credit of 0.7 cents per kilowatt-hour above 200 times the billing demand (50KW minimum).

(C) Minimum Bill. The minimum bill will be $2.63 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill will not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month, equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billing will be less than $13.00.

(D) Contract Demand. Each contract for 15 KW or over will state the number of kilowatts which the customer expects to require and desires to have reserved for his service. This quantity is called the contract demand.

(E) Actual Demand. The actual demand for any month will be the average amount of power used during the period of 15 consecutive minutes when such average is the greatest for the month as determined by suitable meters, or if meters are unavailable, the actual demand will be the connected load or such portion of the connected load as the Project Engineer may determine to be appropriate based on available information as to the customer's use of connected lights, appliances, and equipment, or from checking meters.

(F) Billing Demand. The billing demand for a month will be the contract demand or the actual demand for the month, whichever is greater.

(G) Purchased Power Adjustment. An adjustment will be added for each kilowatt-hour used equal to the estimated purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's power suppliers.

Proposed Rate

Rate Schedule No. 2—General Rate

(A) Application of Schedule. Unchanged from present.

(B) Monthly Rate.

(1) $12.00 minimum which includes the first 50 kilowatt-hours.

(2) 15.00 cents per kilowatt-hour for the next 350 kilowatt-hours

(3) 9.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 6.0 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) Additional kilowatt-hours at 4.60 cents per kilowatt-hour, less a credit of 0.7 cents per kilowatt-hour above 200 times the billing demand (50KW minimum).

(C) Minimum Bill. The minimum bill will be $2.14 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill will not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billing will be less than $12.00.

(D) Contract Demand. Unchanged from present.

(E) Actual Demand. Unchanged from present.

(F) Billing Demand. Unchanged from present.

(G) Purchased Power Adjustment. Unchanged from present.

Dated: April 27, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11183 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska; Alaska Native Claims Selection

[AK–962–1410–00–P and AA–8096–03]

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for approximately 42,670 acres. The lands involved are in the vicinity of Bremner River, Alaska.

Copper River Meridian, Alaska

T. 9 S., R. 2 E.,
T. 12 S., R. 4 E.,
T. 10 S., R. 6 E.,
T. 8 S., R. 3 E.,
T. 10 S., R. 5 E.,
T. 10 S., R. 7 E.,
T. 10 S., R. 4 E.,
T. 12 S., R. 5 E.,

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, shall have until June 3, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Christine Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 99–11103 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1310–01]

Emergency Closure of the Bennett Ranch 3-d Seismic Project Area To Off-road Travel, Otero County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency Closure.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces Field Office is implementing emergency closure of the area that was recently the site of the Bennett Ranch 3-d Seismic Project. Off-road vehicle use is limited to designated roads and trails except for administrative purposes. This closure extends to both motorized and non-

motorized vehicles. This action is taken to aid in the recovery of vegetation from the impacts of a recently completed 3-d Seismic Project which left many tracks of mashed vegetation in the grassland. There is concern that future traffic could follow these tracks, damaging the grassland and creating undesired new roads. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders. The following public land is affected by the closure:

T. 25 S., R. 12 E.,
Secs. 33 through 36.
T. 25 S., R. 13 E.,
Sec. 31.
T. 26 S., R. 12 E.,
Secs. 1, 3, 4, 9 through 15, 21 through 28 and 33 through 35.
T. 26 S., R. 13 E.,
Secs. 6, 7, 18, 19, 30 and 31.

DATES: This closure is effective April 9, 1999 and shall remain in effect until rescinded or modified by the authorized officer. This closure will be rescinded once the vegetation has substantially recovered from the impacts of the seismic project.

ADDRESSES: Copies of this closure order and maps showing the location of the area are available from the Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico, 88005 during normal business hours, Monday through Friday, 7:45 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, Geologist, at the address above or call (505) 525–4351.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year.

The Bennett Ranch 3-d Seismic Project was conducted by Geco-Prakla between March 20 and April 8, 1999. The project included a limited amount of off-road travel by large vibrator buggies and support vehicles along designated lines of travel. This off-road travel was restricted to only that which was absolutely necessary to meet the objectives of normal 3-d seismic exploration for oil and gas. The off-road vehicles used on this project were all equipped with oversize low pressure tires to minimize impacts to soil and vegetation.

This off-road travel has left linear tracks of mashed vegetation which are expected to recover completely after seasonal summer rainfall. However, these tracks are attractive pathways for additional traffic in an area where few roads exist. To prevent the creation of new and undesired roads on these tracks and to prevent long-term damage to the vegetation, it is essential that no additional off-road traffic follow these tracks giving the vegetation an opportunity to recover. Geco-Prakla will post signs along all roads entering the closure to inform drivers of this restriction. The tracks will be monitored by the BLM to determine when recovery is sufficient to rescind this closure.

Dated: April 28, 1999.

Linda S. C. Rundell,

Field Manager, Las Cruces.

[FR Doc. 99–11102 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–610–5101–01–B109) CACA–40467]

Cadiz Groundwater Storage and Dry-Year Supply Program Proposed Pipeline and California Desert Conservation Area Plan Amendment, San Bernardino County, CA

AGENCY: Bureau of Land Management, California Desert District, Needles Field Office.

ACTION: Notice of Public Meeting and extension of comment period.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM), in cooperation with The Metropolitan Water District of Southern California (MWD) will conduct a public meeting to discuss and solicit public input concerning a proposed Cadiz Water Storage and Dry-Year Supply Program (Project) and a plan amendment to the California Desert Conservation Area (CDCA) Plan. The public meeting will be held on May 10, 1999, beginning at 6:00 p.m. in the Needles City Council Chambers, 1111 Bailey Avenue, Needles, California. A Notice of Intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed project on Federal and private lands in the Mojave Desert Region of San Bernardino County, California, was published March 1, 1999, in the **Federal Register** Vol. 64, No. 39, Page 10011. The deadline to provide comments concerning the scope of analysis of the draft EIS/EIR is extended from March 31, 1999, to May 24, 1999.

SUPPLEMENTARY INFORMATION: The project proponents are MWD and Cadiz, Inc. (CI). The Project would consist of: (1) A proposed right-of-way for the construction and operation of a six-foot diameter pipeline from MWD's Iron Mountain Pumping Plant on the Colorado River Aqueduct (CRA) to CI's property in the Cadiz/Fenner area, approximately 35 miles to the northeast; (2) pumping of CRA water supplies to the Cadiz/Fenner area including the possible need to modify a pump at the Iron Mountain Pumping Plant; (3) construction and operation of a series of spreading basins (approximately 200–300 acres) to recharge the groundwater aquifer via infiltration at the Cadiz/Fenner area, and (4) construction and operation of a well field for extraction of groundwater in the Cadiz/Fenner area. Three alternative Project configurations are currently being considered, along with the No Project alternative. An open aqueduct along a portion of the alignment in lieu of an underground pipeline may also be considered. The BLM will be asked to issue right-of-way permits for the construction of portions of the water conveyance facility and other facilities which are proposed to occupy Federal lands. All three alternative Project configurations involve lands currently managed by BLM.

The proposed action will also include a proposed plan amendment to the California Desert Conservation Area Plan. The proposed project pipeline alignment alternatives are outside of established Planning Corridors and contingent corridors identified in the CDCA Plan. The CDCA Plan allows the designation of corridors which address certain types of utility facilities, including all pipelines with diameters greater than 12 inches and major aqueducts or canals for interbasin transfers of water. The CDCA Plan allows utility needs which do not conform to established corridors to be processed by means of a Plan Amendment in conjunction with necessary permit hearings required by other agencies.

The proposed project begins near the MWD Iron Mountain Pumping Plant in southeast San Bernardino County. The proposed 35-mile pipeline alignment would be north to the Cadiz area. The aquifer system which underlies a portion of the Project area, located in the Cadiz and Fenner valleys (''Cadiz/Fenner area'') has been identified as a potential site for underground storage of Colorado River water. This water would be delivered to the Cadiz/Fenner area west of the Ship Mountains from the CRA by way of an underground pipeline or aqueduct. The stored Colorado River water would be subsequently withdrawn when needed and returned to the CRA via the pipeline or aqueduct to meet MWD's water supply needs. In addition, indigenous groundwater in the area of the stored water would also be pumped and transferred utilizing the

same facilities. The Project would have a term of 50 years and would then be reclaimed. MWD supplies supplemental imported water from the State Water Project and the Colorado River to its member agencies in Riverside, San Diego, San Bernardino, Orange, Los Angeles and Ventura Counties.

DATES: Written comments are requested concerning the scope of the proposed project. Comments must be received on or before May 24, 1999. It is important that those interested in the management of the BLM properties within the Project area provide input at this time. A Notice of Availability will be published when the joint Draft EIS/EIR is available for public review.

ADDRESSES: Please submit comments in writing to James Williams, Supervisory Realty Specialist, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside. California, 92507, (909) 697–5390.

FOR FURTHER INFORMATION CONTACT: James Williams at the above address.

Dated: April 27, 1999.

George Meckfessel,

Acting Field Manager.

[FR Doc. 99–11104 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(UT–942–1430–01; UTU 76746)

Public Land Order No. 7388; Partial Revocation of Executive Order Dated July 2, 1910; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 80 acres of public land withdrawn for the Bureau of Land Management's Power Site Classification No. 34. The withdrawal is no longer needed, and the revocation is necessary to facilitate a pending statewide assembled land exchange This action will open the land to surface entry subject to valid existing rights. Except for 24.27 acres that are temporarily closed to mining due to the pending land exchange, the land has been and will remain open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

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. The Executive Order dated July 2, 1910, which established Power Site Classification No. 34, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 23 S., R. 24 E.,
Sec. 8, N½SW¼.

The area described contains 80 acres in Grand County.

2. At 10 a.m. on June 3, 1999, 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 10 a.m., June 3, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to land withdrawn for power purposes, the provisions of the act are no longer applicable.

Dated: April 29, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–11185 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–034–99–1220–00]

Designation Order; Notice of Overnight Camping Closure Within the BLM Gunnison Forks Wildlife Area and Implementation of Motorized Vehicle Use Restrictions at the Gunnison Forks and on Newly Acquired Public Lands in Delta County, Colorado

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Field Office, Montrose Colorado.

ACTION: Notice; camping closure on public lands administered by the Bureau of Land Management in the Gunnison Forks Wildlife Management Area and the implementation of motorized vehicle use restrictions in the Gunnison Forks area and on the newly acquired public lands resulting from the Tri-State acquisition of February 1999.

SUMMARY: Notice is given that overnight camping is prohibited on all BLM Public Lands within the Gunnison Forks Wildlife Management Area located at the confluence of the Gunnison River and North Fork of the Gunnison River and all public lands north of the Gunnison River between the Towns of Austin and Lazear. In addition, no overnight parking is permitted on the gravel bar adjacent to the Gunnison River and North Fork River at the Forks. Vehicles which park on the site for day use may not block the access to the river. All motorized use in the Forks areas is restricted to designated routes as indicated by signs. Notice is also given that motorized vehicle use on all newly acquired public lands resulting from the Tri-State land acquisition (February, 1999) is hereby restricted to existing roads and trails; no off-road travel is allowed.

DATES: The camping closure and motorized vehicle restriction are effective immediately and will remain in effect until such time that the Uncompahgre Basin Resource Management Plan and/or the Gunnison Gorge Recreation Management Area Plan is amended or revised.

SUPPLEMENTARY INFORMATION: This closure is established to assist the Bureau of Land Management in reducing problems associated with vehicle and camping use in the Gunnison Forks Wildlife Management area and in those areas adjacent to the area. The camping closure is necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping and inappropriate vehicle use.

The restriction of motorized vehicle use to existing roads and trails in the newly acquired public lands is needed to prevent any resource impacts or damage which might be caused by off-road vehicle use. These lands contain significant scenic, recreational, watershed, geologic, wildlife, cultural, and other resources, including potential habitat for critical and/or threatened and endangered species which require protection from unrestricted motorized use.

The camping closure and vehicle restrictions on the newly acquired public lands are consistent with the Uncompahgre Basin Resource Management Plan (1998), the Gunnison Gorge Recreation Area Management Plan (1985), and the Gunnison Forks Habitat Management Plan (1981).

CFR Title 43, Chapter II, Part 8360, Subpart 8364.1 and Part 8340, Subpart

8341.2 provide BLM authority for the camping closure and off-road vehicle use restrictions.

8360.0–7 Penalties: Violations of any regulations in these subparts by a member of the public are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION: A map of the newly acquired public lands referred to in this notice and additional information concerning this closure and motorized vehicle restrictions may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Field Office, 2505 South Townsend Ave., Montrose Colorado 80401, (970) 240–5309.

Dated: April 28, 1999.

James Sazama,

Acting Uncompahgre Field Office Manager.

[FR Doc. 99–11101 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–034–99–1220–00]

Designation Order; Notice of the Implementation of User Fees in the Gunnison Gorge in Montrose and Delta Counties, CO

AGENCY: Bureau of Land Management, Uncompahgre Field Office, Montrose, Colorado.

ACTION: Notice: Implementation of day and overnight user fees on public lands administered by the Bureau of Land Management within the Gunnison Gorge Wilderness Study Area and Recreation Area.

SUMMARY: Notice is hereby given that day use and overnight user fees are being charged for all private and commercial users, 16 years of age and older, within the Gunnison Gorge river canyon from the downstream boundary of the Black Canyon of the Gunnison National Monument down to, but not including the Smith Fork confluence (10 miles downstream of the Chukar boater put-in). There is no charge for private walk-in fishing or camping in the river canyon below the Smith Fork. Visitors that use the jet boat, raft rental and/or guide services of the Gunnison River Pleasure Park in the four-mile section of the Gunnison River between the North Fork and Smith Fork confluences will also be charged user fees.

Fees for day use are set at $3.00 per person and overnight use fees are set at $5.00 per person per day (i.e., $10 for one night camping; $15 for two nights, and $20 for three nights camping). An annual Gunnison Gorge pass for day use only is available for $15 per person. Golden Age, Golden Eagle, or Golden Access Passes or other similar entrance passes cannot be applied to user fees.

DATES: The implementation of user fees is effective immediately for the areas described above.

SUPPLEMENTARY INFORMATION: Fees will be collected on site via a self-issuing 3-part permit form, at the Chukar, Duncan, Bobcat, and Ute Trailheads. Visitors are instructed to fill out use information on the form, deposit their fees in the fee tube located at the trailhead and carry a copy of the fee receipt with them while in the Gorge as proof of payment. An additional copy of the fee receipt is to be left on visitors' vehicles at the trailhead.

All visitors to the Gunnison Gorge are also required to sign the visitor registration sheets located at the trailheads or the Chukar put-in. Visitors who intend on camping within the river corridor must also sign-in for a designated campsite on the registration sheet, following the directions for boater or walk-in sites provided at the trailhead or in the user brochure.

Visitors under the age of 16 years are exempt from paying fees, but must be signed-in on the register. Commercial guides are exempt from paying user fees only when they are on official duty with their respective companies in the Gorge. Golden Eagle, Age, and Access Passports apply only to entrance fees at designated areas and cannot be used to cover user or impact fees such as those imposed in the Gorge. National passes or other similar recreation discount cards are also not accepted for payment of user fees. The Gunnison Gorge Annual Day Use Pass applies only to day use and cannot be applied towards overnight user fees. Noncompliance with fee regulations, registration requirements, and/or other user regulations of the Gunnison Gorge may result in fines up to $1,000 and/or imprisonment up to 12 months and possibly, additional civil action.

Additional Information: In 1996, to address increasing visitor use and impacts on the public lands and declining federal budgets for recreation, Congress directed the U.S. Department of the Interior to implement the Recreation Fee Demonstration Program for three of its agencies, the BLM, the National Park Service, and the U.S. Fish and Wildlife Service. The intent of the program is to help spread some of the costs for managing these lands among those who use them. The Gunnison Gorge is one of the original BLM fee demonstration pilot sites. The site was specifically chosen to test BLM's ability to collect fees and user acceptance of fees in a remote, high intensity use area. All of the fees collected in the Gorge are returned to the Uncompahgre Field Office for use in managing the area. In 1997–98, the BLM conducted public meetings and formed a Fee Work Group composed of private and commercial interests and members of the BLM's Southwest Resource Advisory Council (RAC). The Work Group developed the schedule of fees that would be charged in the Gunnison Gorge and set funding priorities for spending the fees.

Authorities: The Omnibus Consolidated Rescissions and Appropriation Act of 1996 (PL 104–134, Sec. 315) provides the authority for BLM to carry out the Recreational Fee Demonstration Program by charging and collecting fees in Pilot Fee Sites. Under this authority, the agency ''may assess a fine of not more than $100 for any violations of the authority to collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services.'' Additional authorities for collecting user fees, implementing special regulations for visitor conduct, and imposing fines for noncompliance with regulations include the Federal Land Policy and Management Act of 1976, P.L.–94–579 (43 U.S.C. 1701 et seq.), the Land and Water Conservation Fund Act of 1965, P.L. 88–578 (16 U.S.C. 460 (1–6a) *et seq.*), and Title 43 CFR, Subpart 8372.

Dated: April 28, 1999

Karen S. Tucker,

Acting Uncompahgre Field Office Manager.

[FR Doc. 99–11100 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority for the collection of information under 30 CFR Part 774, Revision; renewal; and transfer, assignment, or sale of permit rights. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 3, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementation provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew approval of the collection of information in 30 CFR Part 774, Revision; renewal; and transfer, assignment, or sale of permit rights. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0088, and is identified in 30 CFR 774.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 13, 1999 (64 FR 2231). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 774—Revision; renewal; and transfer, assignment, or sale of permit rights.

OMB Control Number: 1029–0088.

Summary: These regulations and sections 506(d), 511(a)(1) and 511(b) of SMCRA provide that persons seeking permit revisions, permit renewals, or the transfer, sale, or assignment of permit rights for surface coal mining operations must submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant and application meet the requirements for approval.

Frequency of Collection: On occasion.

Decription of Respondents: Coal mine operators and State regulatory authorities.

Total Annual Responses: 5,442.

Total Annual Burden Hours: 100,470.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0088 in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 27, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–11124 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice; Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on April 5, 1999, a proposed *De Minimis* partial Consent Decree in *United States* v. *American Jetway Corporation, et. al.,* Civil Action No. 98–73295, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against American Renovating Company for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, American Renovating Company will pay $20,078 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Jetway Corporation, et. al.,* D.J. Ref. 90–11–3–289/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11072 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Under The Resource Conservation and Recovery Act and Clean Water Act

Notice is hereby given that a consent decree in *United States and State of Texas* v. *Encycle/Texas, Inc. and ASARCO, Inc.,* Civil Action No. H–99–1136 (S.D. Tx.) was lodged with the United States District Court for the Southern District of Texas on April 15, 1999.

In this action the United States and State of Texas sought injunctive relief and civil penalties under Section 3008(a) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928(a), and the United States sought injunctive relief and civil penalties under Section 309 (b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319 (b) and (d). The decree resolves civil penalty and injunctive relief claims of the United States and Texas against Encycle/Texas, Inc. (''Encycle'') and ASARCO Inc. (''ASARCO'') under RCRA for alleged violations of hazardous waste regulations associated with

materials management practices at Encycle's facility in Corpus Christi, Texas and ASARCO's facilities in: East Helena, Montana; El Paso; Texas; and Amarillo, Texas. The consent decree also resolves civil penalty and injunctive relief claims of the United States against ASARCO under the CWA for alleged unpermitted discharges and permit violations at ASARCO's Tennessee mines.

The decree requires Encycle and ASARCO Inc. to: revise Encycle/Texas, Inc.'s hazardous waste management procedures; perform appropriate RCRA corrective action at Encycle and ASARCO's El Paso facility; develop and use innovative metals recycling technology at Encycle; perform an auto and truck tire recycling project at El Paso; implement an enhanced corporate-wide environmental management and compliance auditing system at ASARCO's operating domestic facilities. The settlement also includes payment of civil penalties for alleged past violations totaling $5.5 million ($2 million to be paid to the State of Texas), and performance of the following supplemental environmental projects: a permanent 30 acre environmental conservation area for public use to be maintained by ASARCO in Corpus Christi; an air quality project to reduce particulate pollution in the El Paso area; and, a wetlands restoration project at ASARCO's Coy Mine in Tennessee.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States and State of Texas* v. *Encycle, Texas, Inc. and ASARCO Inc.* (S.D. Tx.), DJ Ref. #s: 90–7–1–910, 90–7–1–910/1, and 90–7–1–890.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 910 Travis Street, Houston, Texas 77002; at the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–8892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the decree by mail, please enclose a check in the amount of $72.25 for a copy including exhibits, or $31.50 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99–11074 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 18, 1999 a proposed consent decree in *United States* v. *National Wood Preservers, Inc., et al.,* Civil Action No. 96–CV–5269, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States sought recovery of approximately $7 million in response costs incurred as well as costs to be incurred by the United States in response to the release or threatened release of hazardous substances at the Havertown PCP Superfund Site (''Site''), located in Havertown Township, Delaware County, Pennsylvania. The Consent Decree will resolve the claims against one of the defendants, the Estate of Clifford Rogers, by providing for the sale of the portion of the Site currently owned by the Estate, which is its only remaining asset, and pay to the United States 80% of the proceeds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Wood Preservers, Inc., et al.,* DOJ reference #90–11–3–1680.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11073 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States, State of Illinois, and State of Missouri v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States, State of Illinois and State of Missouri* v. *Allied Waste Industries, Inc., and Browning-Ferris Industries, Inc.,* Civil No. 1:99CV 00894 on April 8, 1999. A Competitive Impact Statement was filed on April 21, 1999. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Complaint alleged that the proposed acquisition by Allied Waste Industries, Inc. (''Allied'') of certain small container waste hauling assets from Browning-Ferris Industries, Inc. (''BFI'') in the St. Louis market would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The St. Louis market was defined as the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison, and Monroe. The proposed Final Judgment, filed at the same time as the Complaint, required Allied, among other things (1) to divest 12 of BFI's small container waste hauling routes serving the St. Louis market and related assets; (2) to offer less restrictive contracts to small container commercial waste hauling customers, and (3) not to acquire any commercial waste hauling assets in the St. Louis market for five years.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Allied. Copies of the Complaint, Hold Separate

Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement Antitrust Division.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate Stipulation and Order;

A. ''Allied'' means Allied Waste Industries, Inc. a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. ''BFI'' means Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''Commercial waste hauling'' means the collection and transportation to a disposal site of trash and garbage (but not medical waste: organic waste; special waste, such as contaminated soil; sludge; or recycled, materials) from commercial and industrial customers. Commercial waste hauling means using front-end load and rear-end load trucks to service small containers in the St. Louis area. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. ''Relevant Hauling Assets'' means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A attached to the proposed Final Judgment) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B attached to the proposed Final Judgment) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property nd improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

E. ''Small container'' means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

F. ''St. Louis market'' means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. ''Relevant State'' means the state in which the Relevant Hauling assets are located.

II

Objectives

The Final Judgment filed in this case is meant to ensure Allied's prompt divestitures of the Relevant Hauling Assets for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis market, to remedy the effects that plaintiffs allege would otherwise result from Allied's acquisition of certain BFI assets. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Hauling Assets are an independent, economically viable, and ongoing business concern; and that competition is maintained during the pendency of the ordered divestitures.

III

Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV

Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Allied and by filing that notice with the Court.

B. Allied shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Allied shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court rule declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Allied represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that Allied will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V

Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Allied shall preserve, maintain, and operate the Relevant Hauling Assets, as independent competitive

businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Allied's other operations. Allied shall not coordinate the marketing of, or negotiation or sales by, any Relevant Hauling Asset with Allied's other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, Allied will inform plaintiffs of the steps Allied has taken to comply with this Hold Separate Stipulation and Order.

B. Allied shall take steps necessary to ensure that (1) the Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste hauling business in the St. Louis market; (2) management of the Relevant Hauling Assets will not be influenced by Allied; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Hauling Assets, will be kept separate and apart from Allied's other operations. Allied's influence over the Relevant Hauling Assets shall be limited to that necessary to carry out Allied's obligations under this Hold Separate Stipulation and Order and the Final Judgment.

C. Allied shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Hauling Assets.

D. Allied shall provide sufficient working capital to maintain the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Allied shall take all steps necessary to ensure that the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Hauling Assets.

F. Allied shall not, except as part of a divestiture approved by plaintiffs in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Hauling Assets.

G. Allied shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records and report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Allied shall not hire, transfer, terminate, or otherwise alter the salary agreements for the Allied or BFI employee who, on the date of Allied's signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Hauling Assets are divested pursuant to the terms of the final Judgment, the Relevant Hauling Assets shall be managed by Stephen Zykan. Mr. Zykan shall have complete managerial responsibility for the Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Zykan is unable to perform his duties, Allied shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should Allied fail to appoint a replacement acceptable to the United States, after consultation with the Relevant States, within (10) working days, the United States shall appoint a replacement.

J. Allied shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Arthur A. Feiveson, Illinois Bar No. 3125793

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, #3000, Washington, DC 20530, (202) 307–0901.

FOR DEFENDANT: ALLIED WASTE INDUSTRIES, INC.

Tom D. Smith,

Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005.

FOR DEFENDANT BROWNING-FERRIS INDUSTRIES, INC.:

David M. Foster,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004–2615.

FOR PLAINTIFF STATE OF ILLINOIS

James E. Ryan,

Attorney General.

By:

Christine H. Rosso,

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 W. Randolph, Chicago, Illinois 60601, (312) 814–5610.

FOR PLAINTIFF STATE OF MISSOURI

Jeremiah W. (Jay) Nixon,

Attorney General.

By:

J. Robert Sears,

Assistant Attorney General, Office of the Attorney General, State of Missouri, 1530 Rax Court, Jefferson City, Missouri 65109, (573) 751–3321.

Order

It is so ordered by the Court, this _____ day of _____.

_____

United States District Judge

FINAL JUDGMENT

Whereas, plaintiffs, the United States of America, the State of Illinois, and the State of Missouri, and defendants Allied Waste Industries, Inc., (''Allied''), and Browning-Ferris Industries, Inc. (''BFI''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and that this Final Judgment shall settle all claims made by plaintiffs in their Complaint filed on April 8, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment, is, in the event of the acquisition of certain BFI assets by Allied, the prompt and certain

divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require Allied to make certain divestitures for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis area;

And whereas, Allied has represented to plaintiffs that the divestitures ordered herein can and will be made and that Allied will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States, the states of Illinois and Missouri currently believe that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. ''Allied'' means defendant Allied Waste Industries, Inc., A Delaware corporation with its headquarters in Scottsdale, Arizona and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. ''BFI'' means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''Commercial waste hauling'' means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste hauling means using frontend load and rearend load trucks to service small containers in the St. Louis market. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. ''Small container'' means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

E. ''Relevant Hauling Assets'' means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

F. ''St. Louis market'' means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. ''Relevant State'' means the state in which the Relevant Hauling Assets are located.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Allied shall require, as a condition of the sale or other disposition of all or substantially all of its relevant hauling assets, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. Allied is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Hauling Assets as a viable, ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Relevant State.

B. Allied shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Allied promptly shall make known, by usual and customary means, the availability of the Relevant Hauling Assets. Allied shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Allied shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurance, all information regarding the Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Allied shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. Allied shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI employee) who works at, or whose principal responsibility concerns, any hauling business that is part of the Relevant Hauling Assets.

E. As customarily provided as part of a due diligence process, Allied shall permit prospective purchasers of the Relevant Hauling Assets to have access to personnel and to make such inspection of such assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Allied shall warrant to any and all purchasers of the Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Allied shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Hauling Assets.

H. Allied shall warrant to the purchaser of the Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that with respect to all Relevant Hauling assets, Allied will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental,

zoning, or other permits pertaining to the operation of the asset.

I. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, whether by Allied or by trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Hauling Assets, and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste hauling. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States's sole satisfaction, after consultation with the Relevant State, that the purchaser: (1) Has the capability and intent of competing effectively in the waste hauling business in the Relevant Area; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the commercial waste hauling business in the St. Louis market; and (3) is not hindered by the terms of any agreement between the purchaser and Allied which gives Allied the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the St. Louis market.

V

Appointment of Trustee

A. In the event that Allied has not sold the Relevant Hauling Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Allied any investment bankers, attorneys, or agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, upon consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Allied shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Allied must be conveyed in writing to the relevant plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Allied and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Allied shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Allied shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Allied shall permit bona fide prospective acquirers of each Relevant Hauling Asset to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Allied. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each

person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from Allied, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Allied and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information request from Allied, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Relevant State, shall provide written notice to Allied and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Allied and the trustee that it does not object, then the divestiture may be consummated, subject only to Allied's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Allied under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Allied shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, and interest in the businesses to be divested, and shall describe in detail each contact with any such persons during that period. Each such affidavit shall also include a description of the efforts that Allied has taken to solicit a buyer for any and all Relevant Hauling Assets and to provide requested information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the Untied States, after consultation with the Relevant State, to information provided by Allied, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter. Allied shall deliver to plaintiffs an affidavit which describes in detail all actions Allied has taken and all steps Allied had implemented on an on-going basis to preserve the Relevant Hauling Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Allied's efforts to maintain and operate each Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Allied shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in Allied's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Allied shall preserve all records of all efforts made to preserve the Relevant Hauling Assets and to effect the ordered divestitures.

VIII

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Allied shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Hauling Assets.

IX

Financing

Allied is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X

Contractual Revisions

A. In accordance with paragraph X B, below, Allied shall alter the contracts it uses with its smaller container solid waste commercial customers in the St. Louis market to the form contained in the attached Exhibit C, except for contracts for terms of less than two years.

B. Except for contracts for terms of less than two years, Allied shall offer contracts in the form attached as Exhibit C to all new small container solid waste commercial customers or customers that sign new contracts for small container solid waste commercial service effective on the date Allied acquires the FBI assets. Allied shall offer such contracts to all other small container solid waste commercial customers in the St. Louis market by December 1, 1999.

XI

Acquisitions

Allied is hereby ordered and directed that for a period of five (5) years after notice of the entry of this Final Judgment, Allied shall not acquire any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets located in the City of St. Louis, Missouri; St. Louis County, Missouri; and in the Illinois counties of St. Clair, Madison and Monroe.

XII

Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any Relevant State, and on reasonable notice to Allied made to its principal offices, shall be permitted:

(1) Access during office hours of Allied to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Allied, who may have counsel present, relating to the matters contained in this Final judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Allied and without restraint or interference from it, to interview, either

informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of any Relevant State, Allied shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or XII of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any Relevant State, except in the course of legal proceedings to which the United States or any relevant State is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allied to plaintiffs, Allied represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Allied marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiffs to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

XIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement related to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on April 8, 1999, alleging that the proposed acquisition of Browning-Ferris Industries, Inc.'s (''BFI'') small container commercial waste hauling assets in the St. Louis market by Allied Waste Industries, Inc. (''Allied'') would constitute a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The States of Illinois and Missouri, by and through their respective Attorneys General, are co-plaintiffs with the United States in this action.[1]

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in small containerized commercial waste hauling services in the St. Louis market, which includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Plaintiffs seek, among other relief, a permanent injunction preventing the defendants from, in any manner, combining their small container commercial waste hauling assets in the St. Louis market. By the terms of a Hold Separate Stipulation and Order, which was filed simultaneously with the proposed Final Judgment, defendant Allied must take certain steps to ensure that, until the required divestiture has been accomplished, the BFI assets as outlined in the proposed Final Judgment will be held separate and apart from defendant Allied's other assets and businesses. Allied must, until the required divestiture is accomplished, preserve and maintain the specified BFI assets as saleable and economically viable ongoing concerns.

The United States, its co-plaintiffs, and the defendants also have filed a Hold Separate Stipulation and Order by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, Allied would be required within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. If Allied did not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States, after consultation with its co-plaintiffs.

Additionally, under the proposed Final Judgment, as explained more fully below, defendant Allied would be required to offer less restrictive contracts to its small container commercial waste hauling customers in the St. Louis market; and be prohibited from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of proposed Final Judgment.

The United States, its co-plaintiffs, and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Description of the Events Giving Rise to the Alleged Violation

Allied and BFI are two of the three largest companies engaged in the commercial waste hauling and disposal business, with operations throughout the United States. In 1998, Allied reported domestic revenues of nearly $1.6 billion while BFI reported domestic revenues of nearly $4.7 billion.

[1] The APPA obligates only the United States to file a Competitive Impact Statement.

Allied and BFI agreed to a sale to Allied of BFI's small container commercial waste hauling assets in St. Louis market, as part of an asset swap agreement dated February 11, 1999.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called ''small containers.'' Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load vehicles can also be used to service some commercial small container customers, but these trucks generally are not as efficient as frontend load vehicles and are limited in the sizes of containers they can safely handle. Frontend load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet: the containers do not need to be manually rolled into position by a truck crew as with a rearend load vehicle. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rearend load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in the amount and kind to those generated by residential customers. Generally, rearend loaders use a one or two person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with compactor than to use a number of small containers picked up multiple times a week.

B. Small Containerized Commercial Waste Hauling Service

There are no practical substitutes for small containerized commercial waste hauling service. Small containerized commercial waste hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized commercial waste hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized commercial waste hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option. Accordingly, small container commercial waste hauling service is a line of commerce and a relevant product market.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized commercial waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations that restrict where waste can be disposed of may further localize markets. Flow control regulations designate the disposal facilities where trash picked up within a geographic area must be disposed. Other local regulations may also prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. These laws and regulations dictate that haulers operate only in these local jurisdictions so that they may use the designated disposal facilities.

The Complaint alleges the St. Louis market as a relevant geographic market for small containerized commercial waste hauling services. This market includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Allied and BFI compete with each other in small containerized commercial waste hauling services in the relevant geographic market, which is highly concentrated and becomes substantially more concentrated as a result of the proposed acquisition. In the St. Louis market, Allied and BFI each have over a 25% share of the small containerized commercial waste hauling business. The acquisition would increase the Herfindahl-Hirschmann Index (''HHI''),[2] a measure of market concentration, by about 1400 to about 3900 in the St. Louis market.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized commercial waste hauling service, achieving comparable operating efficiencies required achieving route destiny comparable to existing firms, which typically takes a substantial

[2] The Herfindahl-Hirschmann Index (''HHI'') is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

period of time. A substantial barrier to entry is the use of long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized commercial waste hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the St. Louis market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

Based on the foregoing and other facts, the Complaint alleges that the effect of the proposed acquisition may be substantially to lessen competition in the above-described geographic area in the small containerized commercial waste hauling service market in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized commercial waste hauling services in the St. Louis market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires Allied, within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as a viable ongoing business or businesses, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. The divestiture would include both the small containerized commercial waste hauling service assets and other assets as may be necessary to insure the viability of the small container business. If Allied cannot accomplish this divestiture within the above-described period, the proposed Final Judgment provides that, upon application by the United States as plaintiff, the Court will appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in the relevant market. Similarly, if the divestiture is accomplished by the trustee, the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the business or businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. The defendants must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Allied will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also requires Allied to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit C) to small containerized commercial waste hauling customers in the St. Louis market. These contractual changes involve shortening from three years to two years the term of contracts Allied uses, limiting renewals to one year periods, and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new, small, containerized commercial waste hauling customers and to existing customers that sign new contracts for small containerized commercial waste hauling service, effective beginning the date Allied acquires the BFI assets. By December 1, 1999, Allied must offer the revised contract to all other small containerized commercial waste hauling service customers in the St. Louis market.

The United States concluded that a change in the types of contracts used with small containerized commercial waste hauling service customers in the St. Louis market, in conjunction with the required divestiture, will adequately address the competitive concerns posed by Allied's acquisition of the BFI assets. Several factors led to the decision, including the number of existing competitors in the market; the size of the population and number and density of commercial establishments requiring small containerized commercial waste hauling service; and the number of haulers that currently do not provide, but, absent the long-term contracts that now exist, could provide small containerized commercial waste hauling service in the market. Requiring Allied to offer less restrictive contracts within the St. Louis market eliminates a major barrier to entry and expansion. Haulers already serving the market will be able to more easily expand their current or build new routes and nearby haulers will be able to build routes, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The proposed Final Judgment also prohibits Allied from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of the proposed Final Judgment. The United States concluded that this restriction would ensure continued competition in the market by preventing Allied from acquiring small containerized commercial waste hauling routes which would have had the effect of undercutting the relief required by the proposed Final Judgment by effecting the entry and expansion of other market participants and stifling competition in small containerized commercial waste hauling.

The relief sought in the St. Louis market alleged in the complaint has been tailored to insure that, given the specific conditions in this market, the relief will protect consumers of small containerized commercial waste hauling services from higher prices and poorer quality service that might otherwise result from the acquisition.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against defendants Allied and BFI. The United States could have brought suit and sought preliminary and permanent injunctions against Allied's acquisition of the BFI assets. The United States is satisfied, however, that the divestiture of the assets, the contract relief, and the prohibition on acquisitions, as outlined in the proposed Final Judgment, will promote small containerized commercial waste hauling service competition in the St. Louis market and lower entry barriers that would otherwise substantially lessen competition in this market. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the St. Louis market, will maintain the structure of the St. Louis market that existed prior to the acquisition, will preserve the existence of independent competitors in this area, and will allow for new entry and expansion by existing firms in this market.

VII

Standard of Review Under the APPA for the Proposed Supplemental Order

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed supplemental Order ''is in the public interest.'' In making that determination, the Court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F. 3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '' 'public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F. 2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid/America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a Court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F. 2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F. 2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981). *See also Microsoft*, 56 F. 3d 1448 (D.C. Cir. 1995). Precedent requires that:

[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [5]

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 22, 1999.

Respectfully submitted,

Arthur A. Feiveson,

IL Bar #3125793.

David R. Bickel,

DC Bar #393409.

Thomas J. Horton

Denise Cheung,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc., Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Illinois, and the Office of the Attorney General of the State of Missouri, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the address given below, this 22d day of April, 1999.

Allied Waste Industries, Inc., c/o Tom D. Smith, Jones Day Reavis & Pogue, Metropolitan Square, 1450 G Street, NW, Washington, DC 20005–2088

Browning-Ferris Industries, Inc., c/o David M. Foster, Fulbright & Jaworski, 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615

State of Illinois, Christine H. Rosso, Assistant Attorney General, Office of the Attorney General, Antitrust Bureau, 100 W. Randolph, Chicago, IL 60601

State of Missouri, J. Robert Sears, Assistant Atorney General, Office of the Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109

Arthur A. Feiveson,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 99–11076 Filed 5–3–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98CV03170]

Public Comments and Response on Proposed Final Judgment United States v. AT&T Corp. and Telecommunications, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *AT&T Corp. and Telecommunications, Inc.* Civil Action No. 98CV03170, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 8000 of the U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, telephone: (202) 514–5621, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comment Relating to Proposed Final Judgment and Response of the United States to Comment

Judge Emmet G. Sullivan

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) (''APPA''), the United States of America hereby files the public comment it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comment. The United States has concluded that the change to the proposed Final Judgment that was suggested in the comment would be in the public interest. Accordingly, the United States has secured the consent of the defendants to modify the proposed Final Judgment in this respect. The APPA requires publication of the public comment and the United States' response. When that publication has been completed, the United States will file a Certificate of Compliance with the APPA and a Motion for Entry of the Modified Judgment with the court.

I. Background

This action was commenced on December 30, 1998, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the merger of Tele-Communications, Inc. (''TCI'') with a wholly-owned subsidiary of AT&T Corp. (''AT&T'') and the resultant acquisition by AT&T of a 23.5 percent equity interest in the mobile wireless telephone business of Sprint Corporation (''Sprint PCS'') would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country.

In June 1998, AT&T and TCI executed a Merger Agreement and Plan of Merger pursuant to which TCI would be merged into a wholly-owned subsidiary of AT&T. The proposed transaction would have resulted in the acquisition of a 23.5 percent interest in Sprint's mobile

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[4] *United States* v. *Bechtel*, 648 F. 2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F. 2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d at 565.

[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

wireless business, one of the principal competitors to AT&T's mobile wireless telephone business in many geographic areas throughout the country. The United States concluded that AT&T's incentives to compete with Sprint PCS could be lessened significantly as a result of the ownership of this substantial interest in Sprint PCS. Accordingly, on December 30, 1998, the United States filed a Complaint seeking to enjoin the merger. Contemporaneously with its Complaint, the United States also submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment by the Court after completion of the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16).

Among other things, the proposed Final Judgment requires the defendants to transfer the Sprint PCS stock to a trustee, who is required to divest the stock. See Section V.A., proposed Final Judgment. The proposed Final Judgment also contains a number of provisions to effect a ''hold separate'' arrangement until this divestiture has been completed. See CIS at 12–15. One of these provisions, set forth in Section VI.D. of the proposed Final Judgment, required that the trustee be instructed not to vote the Sprint PCS shares held by the trust.

II. Response to Public Comments

The only comment received by the United States was filed by Sprint.[1] Sprint's comment is focused on section VI.D. of the proposed Final Judgment. Sprint points out that some of its potential corporate transactions require the approval of a majority (or some other specified percentage) of all shares entitled to vote. For these matters, shares that fail to vote are the equivalent of shares voting against a proposal. Given the substantial portion of Sprint PCS shares that will be held by the trust, Sprint contends that its ability to obtain shareholder approval on such matters could be impeded by the non-voting requirement in section VI.D. of the proposed Final Judgment, and that Sprint's effectiveness as a competitor could be diminished by this constraint on its strategic flexibility. Comments of Sprint Corporation at 2.

The United States agrees that section VI.D. of the proposed Final judgment could have such an effect, and that the modification suggested by Sprint would be appropriate in order to address the concerns raised by Sprint. The United States' objective in negotiating the non-voting requirement in Section VI.D. was to protect competition by ensuring that the Sprint PCS shares would not be voted in a way that might reduce competition. In light of the information and analysis set forth in Sprint's comments, however, the United States has concluded that the underlying objective would be better served if section VI.D. is modified, to read as follows: ''The trustee shall be instructed to vote all of Liberty's Sprint Holdings that are entitled to vote for and/or against applicable matters in the same respective proportions as the other holders of the Sprint PCS Tracking Stock.'' This modification will fully neutralize the voting rights of the Liberty Sprint Holdings, yet avoids the unintended effects described by Sprint in its comment.

The defendants and the United States have entered into a Stipulation, attached hereto, agreeing to the entry of a Final Judgment which incorporates this modification to section VI.D., but which is otherwise unchanged from the proposed Final Judgment filed on December 30, 1998.

III. Standard of Review

As set forth in Section VII of the Competitive Impact Statement, the APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538. As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

Under this standard, the Court's role is limited to determining whether the proposed decree is within the ''zone of settlements'' consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1457–58, see also 56 F.3d at 1460 (D.C. Cir. 1995). As the United States Court of Appeals for the District of Columbia Circuit recognized in reversing the district court's refusal to enter an antitrust consent decree proposed by the United States: ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case.'' *United States* v. *Microsoft Corp.*, 56 F.3d at 1458–60. To the contrary, ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' and so the district court ''is only authorized to review the decree itself,'' not other matters that the government might have but did not pursue. *Id.*

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government . . . and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has ''exceptional confidence that adverse antitrust consequences will result. . . .'' *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

IV. Conclusion

For the reasons stated herein, the proposed Final Judgment, with section VI.D. of the proposed Final Judgment modified as indicated above with the consent of the Defendants, is consistent with the public interest.

Dated: March 26, 1999.

[1] This comment is attached hereto as Exhibit A.

Respectfully submitted,

Peter A. Gray,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5636.

King & Spalding

1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006–4706, Telephone: 202/737–0500, Facsimile: 202/626–3737

March 11, 1999.

By Hand Delivery

Mr. Donald J. Russell,
Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530

Re: U.S. v. AT&T Corp. and Tele-Communications, Inc., Civil Action No. 98 CV 03170 (EGS (D.D.C.)

Dear Mr. Russell: In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), Sprint Corporation submits the enclosed comments on the proposed consent decree in the above-entitled action.

Sincerely,

Kevin R. Sullivan

Comments of Sprint Corporation

Sprint Corporation (''Sprint''), pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''Tunney Act''), submits these comments on the Final Judgment proposed by the United States Department of Justice (the ''Department'') concerning the planned acquisition by AT&T Corporation (''AT&T'') of Tele-Communications, Inc. (''TCI'').

Summary

TCI owns about 22% of the outstanding shares of Sprint PCS Stock (a tracking stock which generally tracks Sprint's wireless operations). The proposed Final Judgment requires TCI to transfer its holdings in Sprint PCS Stock to a trustee for the purpose of accomplishing a complete divestiture of such holdings by May 23, 2004, See Final Judgment §§ IV.A., V.A., 64 Fed. Reg. 2506, 2507–08 (January 14, 1999). While the PCS Stock is held in the trust, the trustee is instructed by § VI.D. of the proposed Final Judgment not to vote the stock 64 F.R. at 2509.

Sprint believes that the non-voting provision of the proposed Final Judgment could have the anticompetitive effect of limiting Sprint's financial and operating flexibility. Certain Sprint corporate matters require the approval of a majority (or some other percentage) of all shares entitled to vote. For these matters, not voting has the same effect as a negative vote. Due to the large amount of Sprint PCS Stock the trust will hold, if the trustee does not vote the shares, it could be difficult for Sprint to obtain necessary shareholder votes. Many of the matters that could be affected involve important strategic options including the authorization of additional stock which could be needed to fund new products or technologies, the combination of PCS Group with the rest of Sprint, and the ''spin-off'' of the PCS Group. If Sprint's strategic flexibility is constrained, it could become a less effective competitor in the constantly-evolving telecommunications industry.

In order to avoid these potential anticompetitive effects, the proposed Final Judgment needs to be modified to instruct the trustee to vote the Sprint PCS Stock pro rata in accordance with the votes of all other Sprint PCS shareholders. By ordering the trustee to vote its shares pro rata, the Final Judgment would neuter completely the voting power of the Sprint PCS Stock held by the trust without constraining Sprint.

I. The Non-Voting Provision in the Proposed Final Judgment Would Constrain Sprint's Operating and Financial Flexibility

A. Background

Sprint's PCS Stock is a ''tracking stock'' which generally tracks the performance of Sprint's wireless PCS operations. Sprint's other tracking stock, the FON Common Stock, tracks the performance of Sprint's other operations, including local and long distance telephone service. On most matters, the FON Stock has one vote per share and the PCS Stock has a fluctuating vote based on the market price of the PCS stock relative to the FON Stock.

TCI, through a subsidiary, owns approximately 98.5 million shares of low-vote Series 2 PCS Stock. TCI's shares are equal to approximately 22% of the total shares and share equivalents of the Sprint PCS Stock (not including the warrants and preferred stock owned by TCI). On most matters, the Series 2 PCS Stock owned by TCI has one-tenth of the vote per share of Series 1 PCS Stock.[1] However, on matters for which the PCS Stock votes as a class (as opposed to voting with the FON Stock), the Series 2 PCS Stock has the same voting power as the publicly-traded Series 1 PCS Stock.

[1] Upon sale by TCI to an unrelated party, the Series 2 PCS Stock now owned by TCI will convert to Series 1 PCS Stock with full voting power.

B. The Proposed Final Judgment

Under the terms of the proposed Final Judgment, TCI must, prior to the closing of AT&T's acquisition of TCI, transfer the Sprint PCS Stock it currently owns to a trustee. Final Judgment § IV.A., 64 FR at 2507. Pursuant to § V.A., the trustee must divest by May 23, 2002, the portion of TCI's holdings sufficient to bring the holding to no more than 10% of the outstanding Sprint PCS Stock and must completely divest the Sprint PCS Stock by May 23, 2004. 64 FR at 2508. Section VI.D. of the Final Judgment states that ''[t]he trustee shall be instructed not to vote [the Sprint PCS shares] for so long as they are held in trust.'' 64 FR at 2509.

C. The Potential Anticompetitive Effects

The trustee's inability to vote the shares in the trust will adversely affect Sprint's ability to obtain the necessary shareholder vote in any matter that requires a majority (or some other percentage) of all shares entitled to vote. On these matters, if the trustee does not vote, the large block of PCS stock held by the trust will effectively vote no.[2] Because many important corporate actions require a majority of all shares entitled to vote, Sprint's operating flexibility will be constrained significantly.

The difficulties caused if TCI's PCS shares don't vote are most significant where the Series 2 PCS Stock that the trust will hold has a full vote per share. Spring will be exposed to significant anticompetitive harm if it is unable to obtain shareholder approval for this category of actions.

For instance, in order for Sprint to increase the number of authorized shares of PCS Stock, Article Sixth, Section 3.1(ii) of its Charter requires that the PCS Stock vote as a class (with the Series 2 PCS Stock, that the trust will hold, having a full vote per share). For more PCS shares to be authorized, the approval of a majority of all shares entitled to vote is needed. Assuming, hypothetically, that at the time of a vote Sprint has 450 million shares of PCS Stock that vote and the trust holds approximately 22% of the PCS Stock or 98.5 million shares of Series 2 PCS Stock, Sprint would need approval of 225,000,001 shares. If out of the 351.5 million non-trust shares, only 275 million are voted on this issue due to shareholders failing to send in proxy cards and if the trustee does not vote its shares, Sprint would be required to

[2] The trustee's inability to vote will not affect Sprint's ability to obtain shareholder approval in matters where a percentage of the shares that actually do vote at a given meeting is required.

obtain affirmative votes from 81.8% of the shares that are voted (225,000,001 out of 275,000,000 votes), a difficult percentage to obtain in any public vote. If less than 225 million shares were voted, then Sprint's proposal would fail, even if a full 100% of the shares voted in favor.

Any difficulty in authorizing more PCS Stock could have substantial anticompetitive effects:

- Sprint might need to have more shares of PCS Stock authorized in order to issue more shares to raise capital for the buildout of its PCS network, or to raise substantial capital for events that are not foreseeable today, such as improvements or changes to technology that are necessitated by competitive developments in the PCS business.
- Sprint might desire to complete certain pro-competitive acquisitions using PCS Stock as consideration, which could require the authorization of additional shares.

Without the ability to fund the buildout of its network and other activities that become necessary in the future, and without the ability to acquire strategic business partners that may become critical to the survival of Sprint PCS, Sprint could be placed in a position of substantial competitive disadvantage.

There are numerous other examples of important Sprint corporate actions that require a majority of all shares entitled to vote and entitle the Series 2 PCS Stock that the trust will hold to a full vote per share including:

- Amendment to the Charter that would alter or change the powers, preferences or special rights of the shares of the PCS Stock so as to affect them adversely;
- ''Spin off'' of the PCS Group within 2 years of November 23, 1998; and
- Acquisition by the FON Group or another Group of more than 33% of the assets of the PCS Group.

For each of these actions, the trustee's inability to vote could constrain Sprint anticompetitively by preventing Sprint from structuring itself most effectively.

If the trustee does not vote TCI's PCS shares, the financial and operating flexibility of Sprint will be constrained. To be competitive in telecommunications, a company needs the ability to change its capital structure in order to provide new technologies and compete in new markets. In the past year alone, each of AT&T, MCI, and Sprint has undergone substantial structural changes in an effort to be more competitive. Exactly what will be demanded in the next five years is unknown, but it is certain that technology will progress and companies will need to organize themselves properly to efficiently deliver these developing technologies to their customers.

II. To Avoid Anticompeititive Effects, the Final Judgment Must Order Pro Rata Voting by the Trustee

In order to avoid the anticompetitive effects discussed above, the Final Judgment must require the trustee to vote the Sprint PCS Stock held in the trust pro rata in accordance with the proportion of the votes of the other Sprint PCS shareholders. Under this proposal, the trustee would exercise no discretion in voting the stock, but the views of the other Sprint PCS shareholders would not be frustrated in those situations requiring a majority of all shares entitled to vote.

For all votes in which the PCS shares held by the trust are eligible to vote, the trustee should be instructed to vote the shares in the same proportion as the other shares of PCS Stock are voted. Specifically, the proportion voted in favor and the proportion voting against (or, where shareholders are not provided the opportunity to vote against, the proportion of votes not voted in favor) should be equal to these respective proportions in light of all votes cast by the other holders of Series 2 PCS Stock, the holders of Series 1 PCS Stock, the holders of Series 3 PCS Stock, and the PCS Stock votes that are attributed to the shares of Class A Common Stock held by France Télécom S.A. and Deutsche telekom AG.

Because the Sprint PCS Stock held by TCI has low voting power in most situations, the Department concluded that any concerns that AT&T would influence or control Sprint's competitive behavior are minimal. See Competitive Impact Statement § II.C n.8, 64 FR 2506, 2511. Nevertheless, according to the Competitive Impact Statement filed by the Department, the voting prohibition embodied in § VI.D. is meant to further address the concern that AT&T might ''influence [] the competitive behavior of [Sprint] in ways that reduce competition.'' See Id. By ordering the trustee to vote the PCS Stock held by the trust pro rata, the Final Judgment will eliminate completely any influence or control AT&T or the trustee has over Sprint's competitive behavior and avoids the anticompetitive effect of constraining Sprint's strategic flexibility caused by the no vote approach.

Dated: March 11, 1999.

Respectfully submitted,

Sprint Corporation by its attorneys

Kevin R. Sullivan (D.C. Bar No. 411718),

Peter M. Todaro (D.C. Bar No. 455430),

King & Spalding, 1730 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 737–0500.

Bruce N. Hawthorne,

Andrew M. Tebbe,

King & Spalding, 191 Peachtree Street, Atlanta, Georgia 30303, (404) 572–4600.

[FR Doc. 99–11075 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Revenue Quality Control (RQC) Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with 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 Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the UI RQC Program. Note that as part of an Unemployment Insurance Service (UIS) reorganization effort, the name was changed from RQC to the Tax Performance System (TPS). Discussions are still taking place as to the most appropriate name for the program and so, during the process of extending this program, the reference name shall remain as Revenue Quality Control on all papers, documents, handbooks, forms and software packages. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 6, 1999.

Written comments should:

• 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;

• Evaluate 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Rett Hensley, Unemployment Insurance Service, Employment and Training Administration, Department of Labor, Room S4522, 200 Constitution Ave., NW, Washington, DC 20210; 202–219–5615 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Employment Security Agencies (SESAs) except the Virgin Islands have been required by regulation at 20 CFR 602 to operate a program to assess their Unemployment Insurance tax and benefit programs. RQC developed new measures for tax performance to replace those previously gathered under the Quality Appraisal (QA) system. RQC is designed to assess the major internal UI tax functions by utilizing several methodologies: Computed Measures which are indicators of timeliness and completeness based on data automatically generated via the existing ET 581 automated report; and Program Reviews which assess accuracy through a two-fold examination: (a) ''Systems Review'' examine tax systems for the existence of internal controls; (b) small samples of those systems' transactions are then examined to verify the effectiveness of controls.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0332.

Agency: Employment and Training Administration, Department of Labor.

Title: Unemployment Insurance Revenue Quality Control Program.

OMB Number: 1205–0332.

Affected Public: State governments (State Employment Security Agencies).

Total Respondents: Fifty two state governments.

Frequency: Annually.

Total Response: Fifty two.

Average time per response: 1,750 hours.

Estimated Total Burden Hours: 91,000 hours for 52 States.

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 extension of the information collection request; they will also become a matter of public record.

Dated: April 27, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–11133 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(k)(1) of the Job Training Partnership Act, as amended [29 U.S.C. 1671(k)(1)], notice is hereby given of a meeting of the Native American Employment and Training Council.

TIME AND DATE: The meeting will begin at 1:00 p.m. CDT on Thursday, May 27, 1999, and continue until 5:00 p.m. CDT that day. The meeting will reconvene at 9:00 a.m. CDT on Friday, May 28, 1999, and adjourn at 4:00 p.m. CDT on that day. The period from 3:00 p.m. to 5:00 p.m. CDT on May 27 will be reserved for participation and presentation by members of the public.

PLACE: The Lincoln and Jefferson Rooms of the Ramkota Inn, I–29 and Exit 81, Sioux Falls, South Dakota 57107.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics: (1) status of the Program Year 1998 Partnership Plan; (2) results of the evaluation of the section 401 program; (3) progress of the performance measures/standards workgroup; (4) status of technical assistance and training provision for Program Year 1998 and 1999; (5) status of FY 1999 Indian and Native American Welfare-to-Work program implementation; and (6) status of pending implementation of the Workforce Investment Act, including a report on the progress and future actions of the Regulations Work Group.

FOR FURTHER INFORMATION CONTACT: Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 326–2577(TDD) (these are not toll-free numbers).

Signed at Washington, DC, this 27th day of April, 1999.

Anna W. Goddard,

Director, Office of National Programs.

[FR Doc. 99–11132 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–30–U

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. Consolidation Coal Company

[Docket No. M–1999–016–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Lone Mountain Processing, Inc.

[Docket No. M–1999–017–C]

Lone Mountain Processing, Inc., P.O. Box 40, Pennington Gap, Virginia 24277 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Darby Fork No. 1 Mine (I.D. No. 15–02263) located in Harlan County, Kentucky. Due to deteriorating roof conditions in certain

areas of the return air course, the petitioner proposes to establish three monitoring locations to evaluate the air entering and leaving the No. 3 East Main and No. 3 North Main return air course used to return air that ventilates the 7, 8, 11, and 12 Right Panels (5 East Main) to the main surface mine fan. The petitioner proposes also to (i) have a certified person conduct weekly evaluations at each monitoring location to measure the quality of air entering and leaving the monitoring location to determine the methane and oxygen concentrations using an MSHA approved hand-held device, and to measure the quantity of air at each monitoring location using an appropriate calibrated anemometer; (ii) have the examiner record the results of the examinations in a book kept on the surface with the date, time, and his/her initials and made available to all interested parties; (iii) conduct an investigation of the affected area whenever there is any significant difference in the quantities of air flow at or between the two monitoring stations; (iv) keep all monitoring locations and all approaches to the locations maintained in safe condition at all time; (v) post a sign in the main travelway that would show the safe travel route to each monitoring location; and (vi) instruct all personnel that no travel into the affected area of the air course is permitted, and fence off or barricade with ''Do Not Enter'' warning signs, all other approaches to these locations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Clinchfield Coal Company

[Docket No. M–1999–018–C]

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (canopies or cabs; self propelled diesel-powered and electric face equipment; installation requirements) to its Roaring Fork No. 2 Mine (I.D. No. 44–06308) located in Dickenson County, Virginia. The petitioner proposes to operate its Long Airdox Un-A-Haulers Models CH 810 and 828 electric face equipment without canopies in mining heights of less than 50 inches. The petitioner asserts that although the equipment at issue can be operated with canopies in a minimum height of 48 inches, operating equipment with canopies in lesser heights exposes miners to increased danger, such as dislodgment of roof supports by the canopies, resulting in the increased probability of roof falls that could injure the equipment operator and other miners in the area. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners.

4. K and B Coal, Inc.

[Docket No. M–1999–019–C]

K and B Coal, Inc., P.O. Box 2265, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–17984) located in Knott County, Kentucky. The petitioner proposes to use permanently installed spring-loaded locking devices on its mobile battery-powered machines instead of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Webster County Coal Corporation

[Docket No. M–1999–020–C]

Webster County Coal Corporation, St. Rt. 2668 120 E, Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Dotiki Mine (I.D. No. 15–02132) located in Webster County, Kentucky. The petitioner proposes to use a 200 KW/250 KVA, 480-volt diesel generator system for moving equipment in and out the Dotiki Mine. The petitioner has listed specific procedures, terms, and conditions in this petition to be followed when using this generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Jim Walter Resources, Inc.

[Docket No. M–1999–021–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner states that due to hazardous conditions in the return air course entries, traveling certain areas of the air course would be unsafe. The petitioner proposes to establish evaluation points inby and outby the affected area and have a certified person examine these evaluations points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. ASARCO, Inc.

[Docket No. M–1999–002–M]

ASARCO, Inc., P.O. Box 8, Hayden, Arizona 85235 has filed a petition to modify the application of 30 CFR 56.14100(a) (safety defects; examination, correction and records) to its Ray Complex Mine (I.D. No. 02–00150) located in Pinal County, Arizona. The petitioner requests a modification of the standard to permit the continued use of the procedures already in place for pre-shift examination of their buses. The petitioner proposes to have a qualified and competent driver to pre-shift inspect the buses for the oncoming shift at 8:00 a.m. to 4:00 p.m., and have the operator drive the bus to the fuel island after the bus is thoroughly inspected, fuel the bus and drive it back to the pit office, and report any defects to the maintenance department for repair before the bus is placed into service. The petitioner states that (i) the buses are not used again until the bus drivers who deliver personnel for the 8:00 a.m. shift drive the bus into the pit at 7:50 a.m.; (ii) the bus drivers who have completed that shift (12:00 a.m. to 8:00 a.m.) drive the buses carrying the outgoing shift workers out of the pit; and (iii) by following the cycle for each shift, each bus receives a minimum of three pre-shift inspections every 24 hours, immediately prior to the start of the new shift. The petitioner asserts that application of the mandatory standard would result in diminution of safety to the miners. In addition, 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 June 3, 1999. Copies of these petitions are available for inspection at that address.

Dated: April 26, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–11154 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–43–U

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–3 CARP DD 95–98]

Ascertainment of Controversy for the Distribution of the 1995, 1996, 1997, and 1998 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to the royalty fees collected in 1995, 1996, 1997, and 1998 for the distribution of digital audio recording devices and media to submit comments as to whether a controversy exists as to the distribution of the royalty fees in the 1995, 1996, 1997, and 1998 Musical Works Funds.

DATES: Comments and notices of intent to participate are due by July 6, 1999.

ADDRESSES: If sent BY MAIL, an original and 5 copies of written comments should be addressed to Office of the General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If DELIVERED BY HAND, an original and 5 copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (''CARP''). Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act of 1992 (the ''Act''), Pub. L. 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. The royalties are deposited with the Copyright Office for further distribution to interested copyright parties who file claims with the Copyright Office each year during January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66 2/3% of the royalties and the Musical Works Fund receives the remaining 33 1/3%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The two subfunds created for the benefit of nonfeatured artists receive a total of 4% of the funds allocated to the Sound Recordings Fund. Of the remaining royalty fees in the Sound Recordings Fund, 60% is allocated to the Copyright Owners Subfund and 40% is allocated to the Featured Recording Artists Subfund. Similarly, the royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Distribution of these fees may occur in one of two ways. If the claimants within each subfund agree among themselves how to distribute the royalty fees, the Librarian of Congress distributes the royalties to the claimants in accordance with their negotiated agreement.[1] 17 U.S.C. 1007(b). Alternatively, if the parties cannot reach an agreement, the Librarian of Congress must convene a copyright arbitration royalty panel (''CARP'') to determine the distribution of royalty payments.[2] 17 U.S.C. 1007(c). Before commencing a distribution proceeding, however, the Copyright Office must first ascertain whether a controversy exists concerning the distribution of the royalty fees among the copyright claimants to the funds available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intent to Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have filed timely a claim to either of the two subfunds comprising each of the 1995, 1996, 1997, and 1998 Musical Works Funds.[3] Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a notice of intent to participate. The notice must identify each year and each subfund in which the copyright owner has an

[1] The claimants to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves for each year as to the proportionate share that each claimant receives from the subfunds. These agreements have made it unnecessary for the Librarian to convene a CARP and have allowed him to distribute all royalty fees allocated to the Sound Recordings Funds during 1993 to 1998.

[2] In 1996, the Librarian convened a CARP to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds. *See* 62 FR 6558 (February 12, 1997). The Librarian's final order determining the distribution of these funds based upon the CARP's findings was appealed to and recently upheld by the United States Court of Appeals for the District of Columbia Circuit.

[3] Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5:00 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM–458, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20557–6400.

interest. Failure to file a timely Notice of Intent may preclude a party from participating in the distribution proceeding. The notices are due July 6, 1999.

III. Consolidation of Proceedings

Section 801(d) of the Copyright Act, 17 U.S.C., as amended by the Technical Amendments to the Satellite Home Viewer Act of 1994, Pub. L. 105–80, states that ''[t]he Librarian of Congress, upon the recommendation of the Register of Copyrights, . . . shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. . . . Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).'' Funds to pay the arbitrators come from the royalty funds under consideration in the distribution proceeding. Because there are insufficient funds available from the Musical Works Fund for any single year to cover the projected cost of an arbitration proceeding that would require oral testimony, the Copyright Office is consolidating the consideration of the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds into a single proceeding in order to have sufficient funds to meet its financial obligations to the arbitrators.

Dated: April 28, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–11182 Filed 5–3–99; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, extension, or reinstatement: Reinstatement.
2. The title of the information collection: NRC Form 536, ''Operator Licensing Examination Data''.
3. The form number if applicable: NRC Form 536.
4. How often the collection is required: Annually.
5. Who will be required or asked to report: All holders of operating licenses or construction permits for nuclear power reactors.
6. An estimate of the number of responses: 80.
7. The estimated number of annual respondents: 80.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 80.
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.
10. Abstract: NRC is requesting reinstatement of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) if the examination will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 3, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11114 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

Notice of Consideration of a License Amendment for International Uranium (USA) Corporation's White Mesa Uranium Mill and an Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated March 2, 1999, an application from International Uranium (USA) Corporation (''IUSA'') to amend Source Material License No. SUA–1358 to allow for the receipt and processing of uranium-bearing material removed from various sites in the St. Louis, Missouri area. These sites are being remediated by the U.S. Army Corps of Engineers in accordance with its responsibilities under the Formerly-Utilized Sites Remedial Action Program (FUSRAP). Under the proposed license amendment, IUSA would process material shipped from the St. Louis area in its White Mesa uranium mill in Blanding, Utah, to recover usable uranium. IUSA would dispose of the tailings, or byproducts of this process in the existing 11(e)2 mill tailings pile at the site. This FUSRAP material from the St. Louis sites is considered to be an ''alternate feed'' material, i.e., an input material for uranium extraction that is different from natural ores containing uranium. Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301)–415–6668, e-mail jek1@nrc.gov.

SUPPLEMENTARY INFORMATION: IUSA's application to amend Source Material License SUA–1358 describes the proposed change and the reasons for the

request. It is available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC, 20555.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or
2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of Part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, CO 80265, Attention: Michelle Rehmann: and,
2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11112 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Notice of Issuance of Materials License SNM–2509; Trojan Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a Materials License under the provisions of title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), to Portland General Electric Company (PGE), authorizing receipt and storage of spent fuel into an independent spent fuel storage installation (ISFSI) located on site at its Trojan Nuclear Plant in Columbia County, Oregon.

The function of the ISFSI is to provide interim storage, in dry storage casks, for up to 344.5 metric tons of uranium contained in fuel assemblies, damaged fuel assemblies and fuel debris from the Trojan Nuclear Plant. The cask that is authorized for use is a Trojan site-specific model of the TranStor Storage Cask designed by BNFL Fuel Solutions Corporation. The license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

The Commission's Office of Nuclear Material Safety and Safeguards (NMSS) has completed its environmental, safeguards, and safety reviews in support of issuance of this license.

Following receipt of the application filed March 26, 1996, a ''Notice of Consideration of Issuance of Materials License for the Storage of Spent Fuel and Opportunity for Hearing'' was published in the **Federal Register** on April 25, 1996 (61 FR 18448). The ''Environmental Assessment (EA) Related to the Construction and Operation of the Trojan Independent Spent Fuel Storage Installation and Finding of No Significant Impact,'' was issued and noticed in the **Federal Register** (61 FR 64378, December 4, 1996) in accordance with 10 CFR part 51. The scope of the EA included the construction and operation of an ISFSI on the Trojan Nuclear Plant site including impacts derived from use of the TranStor cask.

The staff has completed its safety review of the Trojan ISFSI site application and safety analysis report. The NRC staff's ''Safety Evaluation Report for the Trojan Independent Spent Fuel Storage Installation'' was issued on March 31, 1999. Materials License SNM–2509, the staff's Environmental Assessment, Safety Evaluation Report, and other documents related to this action are available for public inspection and for copying for a fee at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at the Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11115 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5 issued to Southern Nuclear Operating Company, Inc., (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendments would allow an increase of 168 fuel assemblies in the storage capacity of Unit 1's Spent Fuel Pool and an increase of 88 fuel assemblies in the storage capacity of Unit 2's Spent Fuel Pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The analyses performed by SNC in support of the rack addition effort demonstrate its acceptability from a variety of different perspectives. Regarding criticality, k_{eff} will remain less than or equal to the current Technical Specification requirement of 0.95 for all normal and abnormal operating conditions. This determination accounts for uncertainties at a 95%/95% probability/confidence level. A fuel assembly drop will not distort the racks in such a manner that it would impair their functionality. Accordingly, the radiological consequences of a fuel handling accident remain within previously established limits for demonstrating compliance with 10 CFR 100 and GDC 19 limits. Additionally, the structural integrity of the Spent Fuel Pool (SFP), the storage racks, and the stored spent fuel will be maintained during a postulated accident or seismic event.

SFP cooling capability will continue to be available to maintain bulk pool temperatures less than 150°F for normal, refueling, and full core discharge conditions. In the event a loss of normal spent fuel cooling should occur, there will be time to take appropriate action to arrange an alternate source to preclude pool boiling. If pool boiling is postulated to occur, the impact on the radiological consequences previously evaluated for this event is minimal and remains acceptable.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The new racks will not require their movement over any stored spent fuel during installation. Rack movements will be conducted using the single failure proof Hatch 1 reactor building crane. During the SFP expansion effort, all heavy load movements will be performed in accordance with SNC's commitments to NUREG–0612 to preclude any damage to fuel assemblies stored in the SFPs, and to preclude any damage to safe shutdown equipment. Crane operator training and load handling instructions in concert with defined safe load travel paths will be provided together with proper crane inspection, maintenance, and testing to ensure reliable heavy load handling operations.

As with the existing spent fuel storage racks, no special storage configurations will need to be imposed on the new racks, even with the closer spacing between fuel assemblies. Therefore, spent fuel will continue to be allowed to be placed in any storage cell location while maintaining a keff less than or equal to 0.95. Also, the spent fuel storage expansion does not involve any rod consolidation or double-tiering of the spent fuel racks.

No new or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify SFP storage expansion at Plant Hatch. Additionally, the rack vendor construction process and analytical techniques are substantially the same as those used for other recently completed storage expansion projects which have been accepted by the NRC.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed small increase in storage capacity of the SFPs at Plant Hatch does not represent a significant challenge to the performance of existing plant systems and structures. As demonstrated in Enclosures 5 and 6, this license amendment request has been evaluated in accordance with the NRC acceptance criteria contained in ''OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications' dated April 14, 1978, as amended on January 18, 1979, and shown to be acceptable for normal and abnormal conditions relative to the criticality, thermal-hydraulic, radiological, seismic, structural, material, and heavy load requirements contained therein.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Pott and Trowbridge, 2300 N Street, NW., Washington, DC, 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).

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.'' The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated April 6, 1999, 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 Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11113 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Electric Station Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would reduce the power level margin assumed for the emergency core cooling system analysis required by title 10 of the Code of Federal Regulations, part 50, Appendix K, based on the proposed use of a new feedwater flow measurement system (the Leading Edge Flowmeter system manufactured by Caldon, Inc.) to allow more accurate measurement of thermal power.

The proposed action is in accordance with the licensee's application for exemption dated August 13, 1998, as supplemented by letter dated December 17, 1998.

The Need for the Proposed Action

The proposed action will improve accuracy of thermal power measurement and support the licensee's separate request to increase licensed power level (which will be reviewed separately by the Commission).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on March 11, 1999, the staff consulted with the Texas State official, Mr. Authur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 13, 1998, as supplemented by letter dated December 17, 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 the University of Texas at Arlington Library, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1 Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11116 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Coordination Meeting With Standards Development Organizations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC has committed through its Strategic Plan to utilize consensus standards to increase the involvement of licensees and others in the NRC's regulatory development process, consistent with the provisions of Public Law (P.L.) 104–113, the National Technology and Transfer Act of 1995, and Office of Management and Budget (OMS) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment.'' As part of this commitment, periodic coordination meetings with key standards development organizations (SDOs) and other stakeholders will be held to foster better communication of SDOs' ongoing activities, and NRC needs regarding standards development and their use.

Date: May 26, 1999-Registration will be from 8:00 a.m. to 8:30 a.m. The meeting will begin at 8:30 a.m. and will last approximately four hours.

Location: U.S. Nuclear Regulatory Commission Headquarters, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

Contact: Wallace E. Norris, USNRC, Telephone (301) 415–6796; Fax: (301) 415–5074; Internet: wen@nrc.gov.

Attendance: This meeting is open to the general public. All individuals planning to attend, including SDO representatives, are requested to preregister with Mr. Norris by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

Program: The purpose of the meeting is to foster better communication between SDOs and NRC regarding standards development and use. By holding periodic coordination meetings, the SDOs will be able to describe their on-going and planned activities, and the NRC will be able to discuss activities and issues related to specific standards that are being developed or revised to meet its regulatory needs. The meeting will be coordinated by the NRC Standards Executive. The NRC anticipates holding these meetings annually.

A number of issues were identified at the September 1, 1998, external stakeholders meeting with regard to NRC communication with SDOs; see SECY–99–029. These issues will be discussed which include the following:

(1) NRC should be more proactive in communicating with SDOs on technical and planning issues. Regular interaction with SDOs is critical to minimizing differences between the scope of standards and NRC's needs.

(2) Regulatory burden is a serious issue that requires active dialogue between SDOs and regulators.

(3) What is a good SDO, and how does a good SDO interact with the NRC?

(4) There should be a periodic meeting to discuss industry and regulatory needs.

(5) There should be more proactive action by the NRC staff in terms of direct communication with the SDOs on standards implementation problems, needs, priorities, justifications. The SDOs should provide a timely response and update status on their standards activity.

(6) To what extent should there be public involvement in the SDOs, and how would that best be accomplished?

Dated in Rockville, Maryland this 23rd day of April, 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

NRC Standards Executive.

[FR Doc. 99–11118 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: May 3, 1999.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 64 FR 19208, April 19, 1999.

ADDITIONS: By telephone vote on April 26, 1999, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to add the following items to the agenda of its closed meeting:

1. Mailing Online.

2. Point of Service One (POS I).

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

Certified to be a true copy of the original document.

Stanley F. Mires,

Certifying Officer.

[FR Doc. 99–11305 Filed 4–30–99; 3:53 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–23813, 811–7895]

Brantley Capital Corporation; Notice of Application

April 28, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Notice of application for an order to declare that the registration under the Act of applicant, a business development company (''BDC''), has ceased to be in effect as of October 30, 1996.

FILING DATE: The application was filed on April 26, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1999, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609. Applicant, 20600 Chagrin Boulevard, Suite 1150, Cleveland, Ohio 44122.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, 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 SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations and Legal Analysis

1. Applicant, a Maryland corporation, elected BDC status by filing a Form N–54A under the Act (''Notification of Election'') and a registration statement under the Securities Exchange Act of 1934 (the ''Exchange Act'') on August 23, 1996. A registration statement under the Securities Act of 1933 was filed on August 26, 1996. The registration statements were declared effective on November 26, 1996, and an initial public offering commenced on December 3, 1996.

2. On October 30, 1996, applicant inadvertently filed a Notification of Registration on Form N–8A which caused applicant to be registered as an investment company under section 8(a) of the Act. On April 16, 1998, applicant filed an amendment to its Notification of Election to confirm its status as a BDC and to reiterate its intention to be regulated as a BDC. On April 26, 1999, applicant filed an application pursuant to section 8(f) of the Act for an order declaring that applicant's registration under the Act has ceased to be in effect as of October 30, 1996.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under sections 2(a)(48)(A) and (B) of the Act may elect to be subject to the provisions of sections 55 through 65 of the Act and be regulated as a BDC by filing with the SEC a notification of the election. Applicant states that it has consistently held itself out to the public as a BDC and not as a registered company and that it has complied with the requirements of the Act applicable to BDC's since it filed its Notification of Election. Applicant further states that its status as a registered investment company is purely technical in nature because the period of its registration (from the filing of Form N–8A to the present) has been entirely within the period of applicant's being subject to regulation as a BDC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11141 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23811; 812–11558]

Kemper Floating Rate Fund, et al.; Notice of Application

April 27, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940

(''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charged.

Applicants: Kemper Floating Rate Fund (''Fund''), Kemper Distributors, Inc. (''Distributor''), and Scudder Kemper Investments, Inc. (''Adviser'').

Filing Dates: The application was filed on April 1, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m.on May 21, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, 222 South Riverside Plaza, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Massachusetts business trust. The Adviser is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares and provide certain administrative services to the Fund. Both the Adviser and the Distributor are indirect subsidiaries of Zurich Financial Services, Inc. Applicants request that the order also apply to any other registered closed-end investment company for which the Adviser or the Distributor or any entity controlling, controlled by, or under common control with the Adviser or the Distributor acts as investment adviser, principal underwriter, or administrator.[1]

2. The Fund's investment objective is to seek as high a level of current income as is consistent with the preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks and finance companies to commercial and industrial borrowers (''Loans''). Under normal circumstances, at least 80% of the Fund's total assets will be invested in Loans. Up to 20% of the Fund's total assets may be held in cash, or invested in fixed-rate debt obligations, short-to-medium-term notes, high yield securities, asset-backed securities, and equity securities.

3. The Fund intends to continuously offer its shares to the public at net asset value. The Fund's shares will not be offered or traded in the secondary market and will not be listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and make periodic repurchase offers to its shareholders.

4. The Fund seeks the flexibility to be structured as a multiple-class fund, although initially it will only offer one class of shares. The Fund will offer Class B Shares and may in the future offer Class C Shares with no front-end sales charge but subject to an early withdrawal charge (''EWC'') that declines over time to 0%. Class B Shares will automatically convert to Class A Shares six years from the date of purchase. The Fund may in the future offer Class A Shares with a front-end sales charge but with no EWC. Class A, Class B, and Class C Shares will be subject to an annual service fee of up to .25% of average daily net assets. Class B Shares may be subject to an annual distribution fee of up to .60% of average daily net assets. Class C Shares also may be subject to an asset-based distribution fee. Applicants represent that the service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'') as if the Fund were an open-end investment company. Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale, as is required for open-end multi-class funds under Form N–1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees (including transfer agency fees), and any other incremental expenses attributable to that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, and Class C Shares. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end fund.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

7. The Fund may offer its shareholders an exchange feature under which shareholders of the Fund may exchange their shares for shares of the same class of other funds in the Scudder Kemper group of investment companies. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, the Fund will treat the EWC as if it were a contingent deferred sales charge (''CDSC'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each investment company presently intending to rely on the relief requested in this application is listed as an applicant.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants asserts that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end fund.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end fund (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposed fairly intended by the policy and provisions of the Act. Applicants request relief under section 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end funds to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end funds under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and the EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end funds. The Fund also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and to the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end funds to enter into distribution arrangements pursuant to rule 12b–1. Applicants also request an order under section 17(d) and rule 17d–1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11079 Filed 5–3–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41334; File No. SR–AMEX–99–03]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Bond Indexed Term Notes

April 27, 1999.

I. Introduction

On January 12, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposal to approve for listing and trading under Section 107A of the Amex *Company Guide* seven bond index-linked term notes. The proposed rule change and Amendment No. 1[3] to the proposal were published for comment in the **Federal Register** on March 11, 1999.[4] the Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Amex proposes to list for trading under Section 107A of the *Company Guide*[5] seven term notes, each linked to a different bond index (''Bond Index Notes''). The issuers of these securities will be qualified under Section 107A(a),[6] and each issue will meet the size and distribution requirements of Section 107A(b).[7]

Holders of the Bond Index Notes generally will receive interest on the face value of their securities in an amount to be determined at the time of issuance of the securities and disclosed to investors. The frequency and rate of the interest payment will vary from issue to issue based upon prevailing interest rates and other factors, such as a discount factor and interest payments made on the underlying bonds and credit spreads.[8]

In addition, investors will receive at maturity an amount based on the value of the linked bond index at maturity of the securities, which may be more or less than the original principal amount thereof. The Bond Index Notes will be valued at settlement based upon the following formula: principal amount x (ending index value/beginning index value) less a discount factor, which may reflect interest rates, commissions and other such amounts as will be disclosed in the prospectus provided to investors.[9] Returns to investors in the Bond Index Notes are unleveraged with neither a cap nor a floor.

Bond index values for the purpose of determining the payment to holders at maturity will be determined by reference to prices for the linked index on a business day shortly prior to maturity. The Bond Index Notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue, will not be callable or redeemable prior to maturity, and will be cash settled in U.S. currency.[10] Holders of the securities will have no claim to the bonds included in the indices.

Prior to the commencement of trading the Bond Index Notes, the Exchange will distribute a circular to its membership providing guidance about member firm compliance responsibilities, including suitability recommendations, and highlighting the special risks and characteristics of the proposed securities. In particular, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Bond Index Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The securities will be subject to the Exchange's margin rules.[11] The Bond Index Notes are subject to the equity trading rules of the Exchange except that, where the securities are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

The Exchange anticipates that the issuer will link distinct issues of such securities to the following seven bond indices sponsored and calculated by Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S''): the U.S. Domestic Master, Mortgage Master, U.S. Corporate/Government Master, U.S. Corporate Master, U.S. Treasury/Agency Master, U.S. Treasury Master and U.S. Agency Master Indices. Each index is intended to track a different sector of the fixed income securities market.

The Exchange represents that each of the bond indices are broad based[12] and are adjusted pursuant to objective, publicly disseminated rules.[13] For a bond to qualify for inclusion in an index, it must meet the pre-established and defined list of objective criteria. The bonds included in each of the seven indices also meet or exceed the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Amex *Company Guide*.[14] Each index is rebalanced on the last calendar day of the month. Bonds meeting the index's inclusion criteria on the last calendar day of the month are included in the index for the following month. Issues that no longer meet the criteria during the course of the month remain in the index until the next month-end rebalancing, at which point they are dropped from the index. Bonds included in the indices are held constant throughout the month until the following monthly rebalancing. Bond

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 16, 1999 (''Amendment No. 1''). Amendment No. 1 provided additional details regarding the securities, including the principal factors that will affect the rate of return on the securities and the formula for determining the value of the securities at settlement.

[4] Securities Exchange Act Release No. 41135 (March 3, 1999), 64 FR 12194 (File No. SR–AMEX–99–03).

[5] Under Section 107A of the *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[6] Pursuant to Section 107A(a) of the *Company Guide*, the issuer generally must have assets of $100 million and stockholders' equity of $10 million.

[7] Pursuant to Section 107A(b) of the *Company Guide*, there must be a minimum public distribution of one million trading units with a minimum of 400 holders. When trading is expected to occur in larger than average trading units (*e.g.*, a $1,000 principal amount or more), however, no minimum number of holders will be required. The aggregate market value of issues listed under Section 107A must be at least $4 million.

[8] *See* Amendment No. 1. The discount factor may reflect prevailing interest rates, commissions and such other amounts as will be disclosed in the prospectus provided to investors.

[9] *See* Amendment No. 1.

[10] *Id.*

[11] *See* Amex Rule 462.

[12] The U.S. Domestic Master Index, established in 1975, is an indicator of the performance of the investment grade U.S. domestic bond market. The index has over 7,000 issues and a market value of over $5 trillion. The U.S. Treasury Master Index was established in 1977, and has approximately 160 issues with a market value of $2.2 trillion. The U.S. Agency Master Index, established in 1977, has 1,675 issues with a market value of approximately $450 billion. The U.S. Corporate Master Index was established in 1972, and has approximately 4,700 issues with a market value of $1.2 trillion. The U.S. Corporate/Government Master Index, established in 1972, has 6,574 issues with approximate market value of $3.8 trillion. The U.S. Treasury/Agency Index is a combination of the U.S. Treasury Master and U.S. Agency Master Indices, and contains approximately 1,800 issues with market value of 6.2 trillion. A further description of each of the seven indices is set forth in detail in the notice release. *See* supra, note 4.

[13] Information as to how the indices are calculated, including the inclusion rules, are published on Bloomberg and the Merrill Lynch public web site. Changes in any rules are generally published approximately 30 days in advance of any change.

[14] The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and either: the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange); an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) has guaranteed the debt security; a nationally recognized statistical rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned; (i) an investment grade rating to an immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

weightings for each of the indices are based on a bond's total outstanding capitalization (total face value currently outstanding times price plus accrued interest). Returns and weighted average characteristics are published daily.

Each of the above indices are calculated by the Merrill Lynch Research Portfolio Strategy Group based on the prices of the underlying bonds determined each business day. The vast majority of the prices of the underlying securities comprising the indices are determined by the Merrill Lynch Pricing Services Group. These prices are determined in accordance with all applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding valuation of security positions. When a security price is not available from the Pricing Services Group, the Portfolio Strategy Group will use a security price from a third party vendor that, in its best judgment, will provide the most accurate market price thereof. The resulting index values are then disseminated to, and published by, Bloomberg L.P. and Reuters at the end of each business day. MLPF&S, in its role as calculation agent for the Bond Index Notes, will use the index values as published on Bloomberg L.P. In conjunction with the issuance of the Bond Index Notes, the Exchange intends to publish the index value associated with the previous day's close.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange and, in particular, with the requirements of Section 6(b)(5) under the Act [15] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[16]

The Commission notes that the proposed Bond Index Notes have a certain level of risk because they are derivatively priced and the final rate of return to investors is unleveraged with neither a cap nor a floor. Accordingly, the Commission has specific concerns regarding this type of product. For the reasons discussed below, the Commission believes that Amex's proposal adequately addresses these concerns.

First, the Commission notes that the protections of Section 107A of the Amex *Company Guide* were designed to address the concerns attendant to the trading of hybrid securities like the proposed Bond Index Notes.[17] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations, and compliance requirements, noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the proposed Bond Index Notes. In addition, Amex will distribute a circular to its membership calling attention to the specific risks associated with the Bond Index Notes. Distribution of the circular should help ensure that only customers with an understanding of the risk attendant to the trading of the Bond Index Notes will trade these securities on their broker's recommendations.

Second, the Commission notes that the final rate of return on the Bond Index Notes depends, in part, upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide,* which provides that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least $4 million in market value. Further information, including specific financial data, regarding the issuer and the underlying indices will be publicly available to investors through the prospectus.

Finally, the Commission believes that the listing and trading of the proposed Bond Index Notes should not unduly impact the market for the securities underlying the indices or raise manipulative concerns. The Commission notes that all of the indices are well-established and broad-based. Both the history and performance of these indices, as well as the objective calculation rules for the indices, should be readily available through a variety of public sources. Due to the indices' issue size, market value, and representative nature of different sectors of the fixed income securities market, the Commission believes that the indices are not readily susceptible to manipulation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–AMEX–99–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11145 Filed 5–3–99; 8:45 am]

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[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8623 (March 8, 1990).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41335; File No. SR–CHX–99–01]

April 27, 1999.

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving a Proposed Rule Change Amending the Net Capital Requirements for Specialists

I. Introduction

On February 26, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder [2] a proposed rule change to increase the minimum net capital requirements for specialists. Notice of the proposed rule change appeared in the **Federal Register** on March 23, 1999.[3] The Commission received no comment letters concerning the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CHX Rule 3 of Article XI and add interpretation and policy .01. The proposal would increase the net capital requirements for non-clearing specialists, self-clearing specialists, and members and member organizations, that clear the accounts of other CHX specialists and establish a phase-in period for the increase.

The proposal would require non-clearing specialists to maintain, at a minimum, the greater of (i) $100,000, or (ii) the amount set forth in Rule 15c3–1 under the Act,[4] which now is $100,000. The proposal also would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41167 (March 12, 1999), 64 FR 14032.

[4] 17 CFR 240.15c3–1 (''Net Capital Rule'').

require self-clearing specialists in less than 200 securities to maintain, at a minimum, the greater of (i) $250,000, or (ii) the amount set forth in the Net Capital Rule. The proposal would require self-clearing specialists in 200 or more securities to maintain, at a minimum, the greater of (i) $350,000, or (ii) the amount set forth in the Net Capital Rule. Finally, the proposal would require members that clear the accounts of other CHX specialists to maintain, at a minimum, the greater of (i) $500,000, or (ii) the amount set forth in the Net Capital Rule. Under the proposal, specialists would continue to be required to comply with the Exchange requirement that subordinated cash borrowings and secured demand notes equal or exceed 50% of their total subordinated borrowings to the extent that the borrowings are part of their equity total.

The Exchange proposes to implement the increased net capital requirements over three phase-in dates during a twelve-month period. The phase-in dates would be issued in a Notice to Members within 30 days following approval of this proposal by the Commission. The $100,000 requirement for non-clearing specialists would apply on the first phase-in date. The applicable net capital requirements for self-clearing specialists registered in less than 200 securities would be $150,000, $200,000, and $250,000 for the first, second, and third phase-in dates respectively. The applicable net capital requirements for self-clearing specialists registered in 200 or more securities would be $200,000, $275,000, and $350,000 for the first, second, and third phase-in dates respectively. The net capital requirements for members and member organizations that clear for other specialists would be $350,000, $450,000, and $500,000 for the first, second, and third phase-in dates respectively.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] The Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed, in general, to protect investors and the public interest.[6] Specifically, the Commission believes that raising the minimum level of liquidity that specialists and members that clear for specialists are required to maintain should serve to protect customers and other market participants from potential loses due to the financial failure of specialists, or members or member organizations that clear for specialists. Additionally, the Commission believes that by reducing the risk associated with the financial failure of specialists the proposal should help to ensure the integrity of the securities markets. The Commission also believes that the allocation of different net capital requirements, as set forth in the proposal, is appropriate due to the different levels of risk associated with the categories of net capital requirements.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(5).[7]

It is therefore ordered, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change (SR–CHX–99–01), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11142 Filed 5–3–99; 8:45 am]

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[5] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41338; File No. SR–MSRB–99–2]

Self Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–11 on Sales of New Issue Municipal Securities During the Underwriting Period

April 28, 1999.

I. Introduction and Description of the Proposal

On March 11, 1999, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–11, on sales of new issue municipal securities during the underwriting period. Notice of the proposed rule change appeared in the **Federal Register** on March 25, 1999.[3] No comments were received on the proposal. This order approves the proposed rule change.

The proposed rule change clarifies certain ambiguities in the Board's present syndicate practices rules. Rule G–11(g)(iii), as amended in November 1988,[4] requires a managing underwriter to disclose to syndicate members, in writing, all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks pursuant to Rule G–12(k). Three general questions have been raised by dealers concerning this rule as currently worded.

First, dealers have asked whether the rule requires the managing underwriter to disclose to each syndicate member its own designation information or whether all members are to receive information about all the designations. The proposed rule change clarifies that all designation information must be disclosed to each syndicate member.

Second, dealers have asked whether the managing underwriter is required to disclose designations by total dollar amounts, bond amounts, or both total dollar amounts and bond amounts. The proposed rule change clarifies that the designation information must be expressed in total dollar amounts.

Third, dealers have asked whether the rule requires the managing underwriter to disclose to syndicate members designations made to anyone other than syndicate members, *e.g.,* selling group members. The proposed rule change clarifies that the manager must disclose to each syndicate member all designations, including both those paid to syndicate members and those paid to non-syndicate-members.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[5] Specifically,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 41192 (March 19, 1999), 64 FR 14479.

[4] *See* Securities Exchange Act Release No. 40717 (November 27, 1998), 63 FR 67157 (December 4, 1998).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should make information dissemination more efficient because it clarifies ambiguities that may have impeded compliance with existing rules and because it requires disclosure to syndicate members to be made in a form most useful to them. Competition in the marketplace should also benefit because

the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[6] of the Act.

The Commission set forth its reasons for approving Rule G–11(g)(iii) in its current form, requiring increased disclosure of designation information, when it was amended in November 1998. It believes that the instant proposal, resolving questions that have arisen since that time, provides answers that are fully consonant with those reasons.

The new language that, in response to the first question outlined above, expressly stipulates that designation information must be disclosed to all syndicate members merely clarifies the intent of last year's amendment as understood by the Commission. Concerning the second question, the Commission agrees with the Board that designation information is most useful to syndicate members when stated in terms of dollar amounts, and that there is no need to further require that the information also be stated in terms of bond amounts. Finally, the Commission agrees with the Board that requiring managers to disclose designations paid to non-syndicate-members as well as syndicate members is consistent with the purpose of last year's amendment generally to increase the disclosure of designation information.

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (SR–MSRB–99–2) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11143 Filed 5–3–99; 8:45 am]

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designation information, including information concerning non-syndicate members, will be available to all members of the syndicate. 15 U.S.C. 78c(f).

[6] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41339; File No. SR–NASD–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Use of Non-SRO Arbitration Forums

April 28, 1999.

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 April 14, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change has been filed by the Association as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act. The Association proposes to make the rule change operative on May 17, 1999. 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

NASD Regulation is proposing to amend the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

10000. CODE OF ARBITRATION PROCEDURE

10100. ADMINISTRATIVE PROVISIONS

IM–10100. Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a)–(c) No change.

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of [securities] disputes before the American Arbitration Association *or other dispute resolution forum selected by the parties* where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The proposed rule change is intended to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations, and to ensure that NASD Regulation may take disciplinary action for the failure of a member or associated person to comply with an award obtained pursuant to the rules and procedures of such dispute resolution programs.

Background and Description of Proposed Amendment. In the NASD Code of Arbitration Procedure, IM–10100 provides that it shall be a violation of Rule 2110[4] for a member or a person associated with a member to fail to honor an award or comply with a written and executed settlement agreement obtained in connection with an arbitration at various self-regulatory organizations (SRO) or the American Arbitration Association (AAA), an organization that is not affiliated with the securities industry.

Prior to 1991, the interpretive material now numbered IM–10100 provided only that it was a violation of NASD rules for members and associated persons to fail to honor awards rendered pursuant to the NASD's Code of Arbitration Procedure. The interpretive material was amended in 1991 to include awards issued in arbitration forums sponsored by the other SROs and the AAA. The amendment was intended to encompass awards rendered pursuant to the Uniform Code of Arbitration utilized by all members of the Securities Industry Conference on Arbitration (SICA),[5] or pursuant to the rules applicable to the arbitration of securities disputes before the AAA, which some broker/dealers had begun to offer to their customers as an alternative forum.

In recent years, many alternative dispute resolutions forums have been created and achieved some popularity. Under the sponsorship of SICA, several member broker/dealers are now considering a voluntary pilot program in which they will arbitrate to completion, during a two-year period, a specified number for cases at one of several dispute resolution forums that are not sponsored by the SROs. Under this pilot program, the firms will designate to SICA one or more alternative forums that meet certain due process standards, and will agree to arbitrate all eligible cases at a designated non-SRO forum at their customers' election. Firms may not selectively choose which of their cases will be tried before a non-SRO forum. Cases eligible for the SICA program are customer-initiated cases in which the customer is represented by counsel.[6]

SICA developed the pilot program partly in response to a petition by an organization of attorneys who represent investors, the Public Investors Arbitration Bar Association (PIABA). PIABA had petitioned the SEC to require NASD Regulation to establish the AAA as an alternative forum for all customer arbitrations. Such a requirement would supersede any contrary forum selection clauses in arbitration agreements between members and their customers. The SEC referred the petition to SICA and NASD Regulation for consideration.

In the pilot program the participating non-SRO forums will send copies of all awards to the SRO where the claim either was filed or would have been filed absent the pilot program. Parties are required by the program's guidelines to pay all awards within 30 days of receipt unless a motion to vacate is filed.

While NASD Regulation believes that use of the SICA pilot program does not require a rule change, since it is entirely voluntary and a matter of contract between firms and their customers, NASD Regulation is concerned that there might be some difficulty in bringing disciplinary action for any noncompliance with an award issued by a forum that is not listed in IM–10100. Therefore, NASD Regulation proposes to amend IM–10100 to add language clarfying that failure to comply with awards issued by any dispute resolution forum could be grounds for disciplinary action.

In connection with the above change, NASD Regulation also recommends deletion of the word ''securities'' in paragraph (d) of IM–10100, which currently refers to awards obtained ''pursuant to the rules applicable to the arbitration of securities disputes'' at a non-SRO forum. This change is recommended for two reasons. First, most non-SRO dispute resolution forums do not have separate rules for securities arbitration. Second, the change will also accommodate another emerging trend in which firms are contracting with outside dispute resolution forums to resolve disputes between the firms and their employees. Such disputes would be arbitrated according to employment or commercial rules of the dispute resolution forum, rather than the securities rules. NASD Regulation believes that the use of a non-SRO forum should not allow members or associated persons to circumvent the NASD's rules requiring them to comply with arbitration awards. Therefore, more inclusive language is proposed.[7]

IM–10100, paragraph (d), currently provides that it shall be violation of Rule 2110 for a member or associated person to fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the listed SROs or ''pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law.'' NASD Regulation proposes to delete the word ''securities'' from paragraph (d), and to add the phrase ''or other dispute resolution forum selected by the parties'' after ''American Arbitration Association.'' This will have the effect of bringing under the coverage of the interpretive material an award or settlement agreement obtained pursuant to the arbitration rules of any dispute resolution forum to which the parties have agreed to submit their dispute. It also will no longer restrict the application of IM–10100 to disputes decided under the securities rules of the non-SRO dispute resolution forum, but will apply as well to the employment arbitration rules or general commercial rules of the dispute resolution forum, if applicable to the dispute.

2. *Statutory Basis*

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[8] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect investors and the public interest by ensuring that

[4] Rule 2110 provides as follows: ''A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.''

[5] SICA is a group composed of representatives of the self-regulatory organizations that provide arbitration forums, of public investors, and of the securities industry. Staff of the SEC participate as non-voting invitees.

[6] The pilot program will not be available for disputes involving employment-related or member to member cases, class actions, partnership investments, claims for transactions that occurred more than four years before the pilot program began, or claims in which a respondent firm or associated person has not agreed to participate in the pilot program.

[7] The inclusiveness of this new language does not expand the scope of matters covered by the Code of Arbitration Procedure, which, as specified in Rule 10101, was prescribed and adopted ''for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company.'' Telephone conversation, April 21, 1999, between Jean I. Feeney, Assistant General Counsel, NASD Regulation, and Ira L. Brandriss, Staff Attorney, Division of Market Regulation, Commission.

[8] 15 U.S.C. 78–3(b)(6).

members and associated persons have a duty to comply with awards obtained in non-SRO forums.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 17, 1999, more than 30 days from April 14, 1999, the date on which it was filed, and NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. 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 pubic 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 it 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. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11144 Filed 5–3–99; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41337; File No. SR–NASD–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Materials Regarding Future Priced Securities

April 27, 1999.

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 April 15, 1999,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') 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 NASD. 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

Nasdaq proposes to adopt interpretive material relating to certain convertible securities. Below is the text of the proposed rule change. All text is being added.

* * * * *

IM–4300, Interpretive Material Regarding Future Priced Securities

Summary

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay is setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue $10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into $10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is $5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is $1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several NASD Rules, the issuance of Future Priced Securities could result in a failure to comply with Nasdaq listing standards and the concomitant delisting of the issuer's securities from the Nasdaq Stock Market. Nasdaq'a experience has been that issuers do not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Association originally filed the proposed rule change on March 8, 1999. After consultation with Commission staff, the Association filed Amendment No. 1 to clarify certain provisions of the proposed rule language. Letter to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, NASD, dated April 14, 1999 (''Amendment No. 1'').

always appreciate this potential consequence. NASD Rules that bear upon the continued listing qualification of an issuer and that must be considered when issuing Future Priced Securities include:

1. the shareholder approval rules
2. the voting rights rules.
3. the bid price requirement
4. the listing of additional shares rules
5. the change in control rules
6. Nasdaq's discretionary authority rules

It is important for issuers to clearly understand that failure to comply with any of these rules could result in the delisting of the issuer's securities.

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice should contact The Nasdaq Stock Market, Office of General Counsel at (202) 728–8294 or Listing Qualifications Department at (202) 496–2500. Nasdaq will provide an issuer with a written interpretation of the application of NASD Rules to a specific transaction, upon request of the issuer.

How the Rules Apply

Shareholder Approval

NASD Rule 4310(c)(25)(H)(i) relating to Nasdaq SmallCap issuers and Rule 4460(i)(1) relating to Nasdaq National Market issuers provide, in part:

Each issuer shall require shareholder approval * * * prior to the issuance of designated securities * * * in connection with a transaction other than a public offering involving * * * the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.[4]

When Nasdaq staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for the purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained *prior* to the issuance of the Future Priced Security. Issuers should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20 percent or more of the common stock or voting power outstanding before the issuance of the Future Priced Security;[5] or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the *issuance* of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rules 4310(c)(25)(H)(i)(b) and 4460(i)(1)(B) if the issuance will result in a change of control.

* * * * *

Voting Rights

NASD Rule 4310(c)(21) provides:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

Rule 4460(j) and IM–4310 also provide rules relating to voting rights of Nasdaq issuers.

Under the voting rights rules, an issuer cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the company based on the company's overall book or market value at the time of the *issuance* of the Future Priced Security. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the company based on the company's overall book or market value at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, shareholders cannot otherwise agree to permit a voting rights violation by the issuer. Because a violation of the voting rights requirement can result in delisting of the issuer's securities from Nasdaq, careful attention must be given to this issue to prevent a violation of the rule.

* * * * *

The Bid Price Requirement

NASD Rules 4310(c)(4) and 4450(a)(5) provide that for an issue to be eligible for continued inclusion on the Nasdaq Stock Marekt, the minimum bid price per share shall be $1.

In addition, Rule 4450(b)(4), which applies only to issues qualifying for the Nasdaq National Market under maintenance standard 2, provides that for an issue to remain eligible for

[4] Nasdaq may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

[5] In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.

continued inclusion in the Nasdaq National Market, the minimum bid price shall be $5.

The bid price requirement establishes a minimum bid price for issues trading on Nasdaq. An issue is subject to delisting from Nasdaq if its bid price falls below $1. In addition, certain issues are subject to delisting from the Nasdaq National Market if their bid price falls below $5.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement.[6]

* * * * *

Listing of Additional Shares

NASD Rule 4310(c)(17) provides:

The issuer shall be required to file on a form designated by Nasdaq notification of * * * the issuance of additional shares of any class of securities included in Nasdaq * * * no later than 15 calendar days prior to * * * the issuance of additional shares.

Issuers should be cognizant that under this rule notification is required at least 15 days *prior* to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on Nasdaq. Failure to provide such notice can result in an issuer's removal from Nasdaq.

* * * * *

Public Interest Concerns

NASD Rule 4300 provides:

The Nasdaq Stock Market is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Nasdaq Stock Market stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature, by being included in Nasdaq, are publicly recognized as sharing these important objectives of the Nasdaq Stock Market.

NASD Rule 4330(a) provides:

Nasdaq may * * * deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if * * * Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

The returns on Future Priced Securities may become excessive compared with those of public investors in the issuer's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under Rules 4300 and 4330(a). In addition to the demonstrable business purpose of the transaction, other factors tha Nasdaq staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the issuer's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the issuer; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

* * * * *

Change of Control and Change in Financial Structure

NASD Rule 4330(f) provides:

Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a merger or consolidation that results in a change of control if there is also a change in either the business or the financial structure of the issuer.[7] It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a change of control in a deemed merger or consolidation with the holders of the Future Priced Securities. In addition, the issuance of the Future Priced Security and the large increase in the number of common shares outstanding after conversion of the Future Priced Security may be viewed as a change in financial structure. In such event, an issuer would be require to re-apply for initial inclusion and satisfy all initial inclusion requirements.

* * * * *

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 NASD 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 NASD 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

Nasdaq has seen an increase in the use of securities that convert into

[6] If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

[7] This provision is designed to address situations where a company attempts to obtain a ''backdoor listing'' on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

common stock of the issuer based upon a below-market floating conversion rate (''Future Priced Securities''). In some cases, it appears that there may be a lack of understanding as to how these transactions may implicate Nasdaq rules. Accordingly, Nasdaq has prepared interpretive material that issuers can use when considering whether to issue these securities.

Nasdaq has studied the use of Future Priced Securities by Nasdaq issuers. While Future Priced Securities can provide a legitimate mechanism for issuers to raise capital, each issuance may raise concerns under several Nasdaq Rules, including those rules relating to shareholder approval, voting rights, bid price, listing of additional shares, and changes in control. In addition, the use of Future Priced Securities may be inconsistent with the protection of investors and the public interest. The interpretive material is designed to alert issuers to the potential effect Future Priced Securities may have on the issuer's qualification for continued inclusion on Nasdaq.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The interpretive material is designed to educate issuers as to how Nasdaq applies its various rules to Future Priced Securities in order to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association did not solicit or receive written comments on the proposed rule change.

[8] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act,[9] and Rule 19b–4(f)(1) [10] thereunder, in that it is designated by the Association as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–14 and should be submitted by May 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11146 Filed 5–3–99; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3173]

State of Georgia

As a result of the President's major disaster declaration on April 20, 1999, and an amendment thereto on April 26, I find that Candler and Dooly Counties in the State of Georgia constitute a disaster area due to damages caused by Severe Storms and Tornadoes that occurred on April 15, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 18, 1999 and for economic injury until the close of business on January 20, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Georgia may be filed until the specified date at the above location: Bulloch, Crisp, Emanuel, Evans, Houston, Macon, Pulaski, Sumter, Tattnall, Toombs, and Wilcox.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 317311 for physical damage and 9C6300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 27, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–11140 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri

As a result of the President's major disaster declaration on April 20, 1999, I find that Madison County, Missouri constitutes a disaster area due to damages caused by severe storms and flooding beginning on April 3, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 18, 1999, and for loans for economic injury until the close of business on January 20, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bollinger, Iron, Perry, St. Francois, and Wayne in the State of Missouri may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available eslewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available eslewhere	4.000

The numbers assigned to this disaster are 317411 for physical damage and 9C6400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 27, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–11139 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3010]

Overseas Presence Advisory Panel (OPAP) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Thursday, May 20, 1999, from 9:00 a.m. to 1:00 p.m. in the Principals' Conference Room at the U.S. Department of State. The panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 522b(c)(1), it has been determined that the meeting will be closed to the public. The agenda calls for discussion of classified and sensitive information relating to the Panel's findings and recommendations at Embassies and Consulates overseas; this would include intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information, contact Mr. William Duffy, Overseas Presence Advisory Panel, Department of State, Washington, D.C. 20520; phone: 202–647–6427.

Dated: April 26, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–11186 Filed 5–3–99; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Office of International Aviation; Notice of Request for Extension and Revision of a Currently Approved Information Collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) the notice announces the Department of Transportation's (DOT) intentions to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by no later than July 6, 1999.

ADDRESSES: Four (4) copies of any comments should be sent to the Pricing and Multilateral Affairs Division (X–43), Office of International Aviation, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mr. Keith A. Shangraw or Mr. John H. Kiser, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, at the address above. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Title: Tariffs.

OMB Control Number: 2106–0009.

Expiration Date: July 31, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Chapter 415 of Title 49 of the United States Code requires that every air carrier and foreign air carrier file with the Department of Transportation (DOT), publish and keep open (*i.e.* post) for public inspection, tariffs showing all ''foreign'' or international fares, rates, and related charges for air transportation between points served by it, and points served by it and any other air carrier or foreign air carrier when through fares, rates and related charges have been established; and showing, to the extent required by DOT regulations, all classifications, rules, regulations, practices, and services in connection with such air transportation. Once tariffs are filed and approved by DOT, they become a legally binding contract of carriage between carriers and users of foreign air transportation.

Part 221 of the Department's Economic Regulations (14 CFR part 221) sets forth specific technical and substantive requirements governing the filing of tariff material with the DOT Office of International Aviation's Pricing and Multilateral Affairs Division. A carrier initiates a tariff filing whenever it wants to amend an existing tariff for commercial or competitive reasons or when it desires to file a new one. Tariffs filed pursuant to Part 221 are used by carriers, computer reservations systems, travel agents, DOT, other government agencies and the general public to determine the prices, rules and related charges for international passenger air transportation. In addition, DOT needs U.S. and foreign air carrier passenger tariff information to monitor international air commerce, carry out carrier route selections and conduct international negotiations.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with

60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Estimated Number of Respondents: 230.

Average Annual Burden per Respondent: 5,700 hours.

Estimated Total Annual Burden on Respondents: 1,300,000 hours.

This information collection is available for inspection at the Pricing and Multilateral Affairs Division (X–43), Office of International Aviation, DOT. Copies of 14 CFR Part 221 can be obtained from Mr. Keith A. Shangraw at the address and telephone number shown above.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on April 28, 1999.

John H. Kiser,

Chief, Pricing and Multilateral Affairs Division, Office of International Aviation.

[FR Doc. 99–11106 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of April 23, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5576.

Date Filed: April 20, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0328 dated 20 April 1999, Mail Vote 995—Resolution 010c, TC3 Special Passenger Amending Resolution between Japan and China, Introduce Fares between Fukushima and Shanghai, Intended effective date: 1 June 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–11091 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5484]

Predisclosure Notice Under the Freedom of Information Act for the Release of Vessel Response Plan Information on the Internet

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice is to inform the submitters of vessel response plans that certain portions of the information contained within their plans as submitted to the Coast Guard may be released to the general public via the Internet, and to give them the opportunity to comment on, or object to, the release of that information.

DATES: Comments and related material must reach the Docket Management Facility on or before July 6, 1999.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–5484), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Lieutenant Commander John Caplis, Plans and Preparedness Division, Office of Response, Coast Guard, telephone 202–267–6922, fax 202–267–4065, or at email address *jcaplis@comdt.uscg.mil.* For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this notice (USCG–1999–5484), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

We do not plan to hold a public meeting. You may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting is necessary, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The owners and operators of tank vessels are required to submit vessel response plans to the Coast Guard for review and approval in accordance with the Oil Pollution Act of 1990 and 33 CFR part 155. An important aspect of the planning and approval process is the submission and review of the preparedness arrangements made by the owner/operator for each Captain of the Port (COTP) zone in which their tank vessel operates. These arrangements include provisions for a ''qualified individual'', a spill management team, and contracted response resources. Contracted response resources include arrangements for oil spill removal organizations (OSROs), salvage and firefighting companies, and emergency lightering companies.

As part of our review process, we maintain an electronic database that tracks both the status of these plans as well as many other important elements, such as the contracted response resources listed in the plan for each COTP zone where a vessel operates. We believe that it is important for Federal, State, and local governments, non-governmental organizations, response organizations, and other interested parties within the general public to have ready access to this pre-spill planning information. This information is critical for port state officials who are responsible for monitoring activities within their jurisdictions, as well as entities responsible for planning response activities in our coastal and riverine communities.

The Coast Guard has been working to make this information available to the public. In 1997, we developed an Internet website for disseminating important vessel response plan program information *(http://www.uscg.mil/vrp)*. A portion of the Internet website provides the general public with the status of each plan's approval with respect to each COTP zone. We intend to expand the information available to the general public on this website to include other important data, such as identity of the contracted response resources listed for each COTP zone included in a plan. We intend to make the following information from its electronic database available to the general public via the Internet: (1) Owner name, (2) Operator name, (3) Point of contact information for owner/operator, (4) Point of contact information for plan preparer, (5) Date of last plan update, (6) Plan approval status, (7) Plan approval date, (8) Plan expiration date, (9) Plan identification number, (10) Vessel name, (11) Vessel identification number, (12) Vessel flag, (13) Vessel type, (14) Hull configuration, (15) Vessel length, (16) Cargo types, (17) Primary or secondary carrier designation, (18) Worst case discharge amount, (19) Qualified individuals, (20) Oil Spill Removal Organizations, (21) Other contracted resources, (22) Alternate compliance agreements, (23) Navigational restrictions, and (24) Operating environments.

The information submitted in vessel response plans to the Coast Guard is covered by the Freedom of Information Act (FOIA), applicable regulations, and Executive Order 12600. Under FOIA, information must be disclosed unless it falls within one of the statute's listed exemptions. Exemption 4, which applies to information submitted to the Government by any private person, applies here. Exemption 4 shields from release confidential, commercial, or financial information if the release would cause substantial competitive harm to the submitter. Executive Order 12600 also applies and requires that before any executive agency releases information to which Exemption 4 would apply, it must give the submitter the opportunity to show that the material is confidential, commercial, or financial information and, if released, would cause substantial competitive harm to the submitter. If the submitter objects to the release of the information, then the agency weighs the submitter's arguments and makes a final determination on release of that information. The agency may release information if it does not accept the submitter's assertions of confidentiality or harm, but it must delay the release long enough to allow the submitter to obtain a court order preventing release.

Executive Order 12600 provides that if there is a large number of submitters, as here, the agency may satisfy its requirements by publishing a notice reasonably calculated to accomplish notification. We have determined that publication of this notice in the **Federal Register** and in other relevant Coast Guard publications is reasonably calculated to accomplish notification of submitters of response plans.

Under Executive Order 12600 and 49 CFR 7.17, we must have detailed justification to withhold material you believe should not be placed on the Internet. You should identify material from the twenty-four numbered items in this Notice under *Background and Purpose* that would be likely to cause substantial harm to your present or future competitive position if it were released to your competitors. You must provide to the Coast Guard, by a method listed in this Notice under **ADDRESSES**, detailed information on why release would be harmful. Describe specifically how the information could be used by competitors to your detriment. Some factors you may wish to describe to help us understand your position are (1) the general custom or usage of the information in your business, (2) the number and situation of the persons who have access to the information, and (3) the length of time the information will need to be kept confidential. All submitters of response plans who object to release of information from their plans should respond to this notice as detailed above. We will notify all submitters who respond to this notice of our decision to release or not release their information on the Internet. If a submitter of a response plan does not respond to this notice, we will assume there is no objection to the planned release of information from their plan. The response plan information which we decide to release will not be posted on the Internet until submitters who objected have been given a reasonable opportunity to seek judicial review of our decision.

Dated: April 25, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–11179 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 1998 (FR 63, page 67504).

DATES: Comments must be submitted on or before June 3, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Registration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0042.

Form(s) AC 8050–1, AC 8050–2, AC 8050–4, AC 8050–81, AC 8050–98, AC 8050–117.

Affected Public: Any person wishing to register an aircraft.

Abstract: The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information is required to register and prove ownership of an aircraft. The registration system provides identification of all civil aircraft in the United States.

Estimated Annual Burden Hours: 67,153 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's

estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–11177 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Program Guidance Revision.

The Federal Transit Administration provided program guidance and application procedures in a **Federal Register** Notice dated February 8, 1999, ''Over-the-Road Bus Accessibility Program Grants'' (64FR6165). The notice invited comments regarding the program and stated that program guidance might be revised based upon comments received. There were several comments regarding applying Federal requirements to the entire vehicle rather than to just the wheelchair lifts that are to be added to the vehicles to make them wheelchair accessible. The commenters suggested that the application of Federal requirements to the full vehicle would limit program participation, imposing a burden for a fairly small Federal share. In addition, applying Federal requirements to the entire vehicle would be particularly burdensome for the small over-the-road bus operators. As a result of FTA review of the industry comments describing the detrimental impact that applying federal requirements to the entire vehicle would have on industry participation in this program, and having reviewed the language of the law, FTA is revising its **Federal Register** Notice of February 8, 1999. Federal requirements shall apply only to the incremental cost of making a vehicle wheelchair accessible. Such incremental costs include the lift itself, the expense of installing the lift during manufacture of the vehicle, as well as other items needed to ensure that vehicle accessibility requirements are met, such as wheelchair securement devices.

Issued on: zApril 28, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–11092 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5580]

Notice of Receipt of Petition for Decision that Nonconforming 1990–1992 Acura Legend Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1992 Acura Legend 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 1990–1992 Acura Legend 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 June 3, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1992 Acura Legend passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1992 Acura Legend passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Honda Motor Co., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1992 Acura Legends to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1992 Acura Legends, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1992 Acura Legends are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201

Occupant Protection in Interior Impact, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 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 non-U.S. certified 1990–1992 Acura Legends comply with the Bumper Standard found in 49 CFR Part 581. Petitioner further states that because non-U.S. Acura Legends are equipped with an anti-theft device, they comply with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components*: replacement of the rear door locks and rear door lock buttons with U.S. model components.

Standard No. 208 *Occupant Crash Protection*:

(a) Istallation 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 side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicles are 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 on: April 26, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–11105 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the sixteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 5 through July 16, 1999 in Geneva, Switzerland.

DATES: June 24, 1999, 10:00 AM–1:00 PM; July 20, 1999, 10:00 AM–1:00 PM.

ADDRESSES: Both meetings will be held in room 6332–36, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the sixteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the session and to prepare for the seventeenth session of the UNSCOE and to discuss U.S. positions on UNSCOEwhich is scheduled for December 6–17, 1999 in Geneva, Switzerland. Topics to be covered during the public meeting include: (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities), (6) Harmonized requirements for compressed gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packagings used to transport hazardous materials, (9) Requirements for Toxic by Inhalation (TIH) substances, (10) Hazard communication requirements including harmonized shipping papers, (11)

Segregation in freight containers and (12) Requirements for infectious substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the sixteenth session of the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/danger/meetings.htm#ST/SG.* These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm.

Issued in Washington, DC, on April 28, 1999.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–11107 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–561X and STB Docket No. AB–562X]

Rio Valley Railroad, Inc.—Abandonment Exemption—In Cameron County, TX and Rio Valley Switching Company—Discontinuance of Service Exemption—In Cameron County, TX

On April 14, 1999, Rio Valley Railroad, Inc. (RVRI), and Rio Valley Switching Company (RVSC) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemptions from the provisions of 49 U.S.C. 10903 for RVRI to abandon, and RVSC to discontinue service over, an 8.808-mile line of railroad, known as the Rio Hondo Line, extending between milepost 0.316 near San Benito and milepost 9.19 at Rio Hondo, in Cameron County, TX.[1] The line traverses U.S. Postal Service ZIP Code 78583 and includes the station of Rio Hondo.

The line does not contain federally granted rights-of-way. Any documentation in RVRI's and RVSC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting exemption proceedings pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 2, 1999.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemptions. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested parties should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 24, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–561X and AB–562X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902. Replies are due May 24, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 27, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11003 Filed 5–3–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The beginning of the Rio Hondo Line, from milepost 0.066 to milepost 0.316, is not included in the proposed abandonment and discontinuance.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–462 (Sub–No. 2X)]

Southeastern International Corporation—Abandonment Exemption—in Wharton County, TX

On April 14, 1999, Southeastern International Corporation (SEI) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire 11.76-mile line of railroad extending from milepost 42.24 in Wharton to milepost 54.0 near Lane City, in Wharton County, TX. The line traverses U.S. Postal Service Zip Codes 77488 and 77453, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in SEI's possession will be made available promptly to those requesting it.

In this proceeding, SEI is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 2, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 24, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–462 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Karl Morell, 1455 F Street, NW, Suite 225, Washington, DC 20005. Replies to the SEI petition are due on or before May 24, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: April 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–10776 Filed 5–3–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services and the Office of Foreign Exchange Operations within the Department of the Treasury are soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR Part 128.

DATES: Written comments should be received on or before July 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to Dwight Wolkow, administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington DC 20220. Direct all written comments on foreign currency transactions and positions to Gregory Berger, Deputy Director, Office of Foreign Exchange Operations, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on international capital transactions and positions or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by calling (202) 622–1276. Requests for additional information on foreign currency transactions and positions or copies of the forms and instructions should be directed to Gregory Berger, Office of Foreign Exchange Operations, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW, Washington DC 20220, or by calling (202) 622–2650.

SUPPLEMENTARY INFORMATION:

Title: 31 CFR Part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

OMB Number: 1505–0149.

Abstract: 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR Part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of Program Services and the Office of Foreign Exchange Operations to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

Current Actions: No changes to recordkeeping requirements are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Average Time per Respondent: 3 hours per respondent per filing.

Estimated Total Annual Burden Hours: 6,000 hours, based on one response per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether 31 CFR 128.5 is necessary for the proper performance of the functions of the Offices, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Timothy D. DuLaney,

Director, Office of Foreign Exchange Operations.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–11093 Filed 5–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for reinstatement

approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning the Survey of Foreign Portfolio Investment in the United States as of March 31, 2000.

DATES: Written comments should be received on or before June 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue, NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwright Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by faxing (202) 622–7448, or by calling (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Survey of Foreign Portfolio Investment in the United States as of March 31, 2000.

OMB Number: 1505–0123.

Abstract: These forms are used to conduct periodic surveys of foreign portfolio ownership of U.S. long-term securities. These data are used by the U.S. Government in the formulation of international and financial policies and for the computation of the U.S. balance of payments and international investment position. Surveys of foreign portfolio investment in the United States are required to be conducted at least once every five years by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*). The last such survey was conducted as of December 31, 1994. The next survey will be held as of March 31, 2000, to avoid placing a reporting burden on respondents which coincides with Y2K-related efforts during the last half of 1999.

Current Actions: Exemption levels will be raised from $10 million to $20 million, and the number of data items will be reduced. Data will be collected primarily from custodians of securities, and from issuers of securities only when foreigners have registered their foreign holdings directly with the U.S. securities issuer and do not use a U.S.-based custodian to safekeep the securities.

Type of Review: Reinstatement with change.

Affected Public: Business/Financial Institutions.

Forms Survey of Foreign Portfolio Investment in the United States (1505–0123).

Estimated Number of Respondents: 1,200.

Estimated Average Time per Respondent: 50 hours, but this will vary widely from respondent to respondent. It is estimated that all respondents will require on average a minimum of 16 hours to understand the survey requirements and gather the information necessary to determine their filing status. For issuers of securities that have data to report and are not custodians, the estimate is 40 hours total. For custodians of securities, the estimate is a total of 160 hours on average, but this figure will vary widely for individual custodians.

Estimated Total Annual Burden Hours: 60,000 hours.

Frequency of Response: Approximately once every five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether the Survey is necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness and clarity of the information to be collected; ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–11180 Filed 5–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; New System of Records—Center for Minority Veterans Management Information System—VA (95VAOOM)

AGENCY: Department of Veterans Affairs.

ACTION: Notice, new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled ''Center for Minority Veterans Management Information System—VA (95VAOOM).''

Under section 317 of Title 38, United States Code, VA is required to assess minority veterans' use of VA benefits, programs and services. This new system of records will primarily be used to maintain an automated database containing demographic data on veterans that the Center will use to analyze trends on how VA serves minority veterans, and the extent to which minority veterans are using benefits, programs and services offered by VA. The automated database is used to produce statistical reports that assist VA managers in their efforts to correct any disparities in the care and delivery of services to minority and women veterans.

The automated database is known as the Automated Demographic Data File System (ADDFS). The database includes data on veterans extracted from automated VA benefits data files located at the VA Automation Center, Austin, Texas. Data extracted includes names, social security numbers, claim numbers, race, ethnicity and gender of a randomly selected group of veterans. Similar data will also be extracted from the Department of Defense (DoD) military personnel systems of records in order to supplement VA databases. The ADDFS will be configured to interact with current VA automated records systems as well as the DoD military personnel automated records system to produce reports for statistical analyses. Statistical reports will not contain personal identifiers. Reports will be statistical data only, which present information in terms of percentages based on the race, ethnicity and gender of veterans served by VA.

This system of records will also include data pertaining to individual veterans, as well as correspondence, electronic mail and memoranda memorializing conversations with individuals concerning complaints about benefits and services provided to VA beneficiaries based on the race or ethnicity of the beneficiary. The records may also include documents reflecting the processing and investigation of these complaints, and documents extracted from the VA beneficiary's VA records.

The information in this system will be maintained in paper and electronic form. The ADDFS will be maintained only in electronic form. Other records in the system may be maintained in either electronic or paper form. Release of information from these records will be made only in accordance with the provisions of the Privacy Act of 1974 for

investigative, judicial and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records, and that specific routine uses for transfer of this information are appropriate.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, Room 1154, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received 30 days after publication in the **Federal Register** (June 3, 1999) will be considered. All written comments will be available for public inspection at the above address, in Room 1158, between 8:00 a.m. and 4:30 p.m. only, Monday through Friday (except Federal holidays). If no public comments are received during the 30-day review period allowed, or unless otherwise published in the **Federal Register** by VA, the new system of records, and the routine use statements included herein are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Hawkins (OOM), Department of Veterans Affairs, 810 Vermont Avenue NW, Suite 700, Washington, DC 20420, telephone number (202) 273–6708.

SUPPLEMENTARY INFORMATION: A ''Report of Intention to Publish a **Federal Register** Notice of a New System of Records'' and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by provisions of Title 5, U.S.C. 522(r) (Privacy Act), and guidelines issued by OMB (61 FR 6428) (1996).

Approved: April 14, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

95VA00M

SYSTEM NAME:

Center for Minority Veterans Management Information System—VA (95VA00M).

SYSTEM LOCATION:

Record are maintained at the Center for Minority Veterans' office in VA Headquarters, Washington, DC. VA's Automation Center, 1615 E. Woodward Street, Austin, Texas 78772, maintains the Automated Demographic Data File System (ADDFS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will cover the following individuals: (1) VA beneficiaries who contact the Center for Minority Veterans for assistance in addressing concerns about benefits and services provided to them based on the race or ethnicity of the beneficiary. (2) The ADDFS will be comprised of demographic data on randomly selected veterans who served in the military from 1975 to the present and whose VA benefits data are currently maintained in an existing VA or DoD automated database.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records will include correspondence, electronic mail and memoranda memorializing conversations with individuals. The records also may include documents reflecting the processing and investigation of these complaints, and documents extracted from the beneficiary's VA records in order to assist in responding to the veteran's inquiry. The ADDFS will include the names, social security numbers, claim numbers, race, ethnicity and gender of randomly selected veterans currently maintained in existing VA or DoD automated file systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38, U.S.C. 317, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of specific information may be made to a congressional office, in response to an inquiry from that congressional office made at the request of the individual and concerning that individual's records in this system.

2. Disclosure may be made during reviews by the National Archive and Records Administration during records management inspections conducted under the authority of Title 44, U.S.C. 2904 and 2906.

3. At the initiative of VA, pertinent information may be disclosed to appropriate Federal, State or local agencies responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders, where VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

4. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel or the Equal Employment Opportunity Commission, when requested in the performance of their authorized duties, and the request is not in connection with a law enforcement investigation.

5. The Department of Veterans Affairs (VA) may disclose records in this system of records in proceedings before a court or adjudicative body before which VA is authorized to appear when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the information contained in the records is compatible with the purpose for which the records were collected.

6. The Department of Veterans Affairs (VA) may disclose records in this system of records to the Department of Justice when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the information contained therein is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The ADDFS is stored in a secure area located at VA's Automation Center, 1615 E. Woodward Street, Austin, Texas 78772. ADDFS data files are stored On magnetic disk and for archival purposes, on magnetic tape. Other records are stored in the Center for Minority Veterans in VA Headquarters, Washington, DC, or on file servers at VA Headquarters that are utilized by the Center.

RETRIEVABILITY:

Automated records may be retrieved by name, social security number, claim number, race, ethnicity and/or gender. Paper records are retrieved by name.

SAFEGUARDS:

Access to the automated system is via computer terminal; standard security procedures, including a unique identification code and password

combination, are used to limit access to authorized personnel only. Specifically, in order to obtain access to the automated records in this system of records, an individual must have access to VA's automated resources. Access to the ADDFS at VA's Automation Center is limited as follows: An individual may not self-register for this access. Formal documentation of the request for access, signed by the employee's supervisor and approved by the Director, Center for Minority Veterans, is required before an individual may obtain such access. Authorized customers are issued a customer identification code and a one-time password. Access to paper records maintained by the Center for Minority Veterans is limited to VA employees who need to have access to the records in order to perform their agency duties. Generally, file areas are locked after normal duty hours and the Federal Protective Service or other security personnel protect the offices from outside access.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Minority Veterans, 810 Vermont Avenue, NW, Washington, DC 20420.

RECORDS ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the system manager.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

For investigation purposes, information may be obtained from existing VA beneficiary records, employment records; VA beneficiaries, third parties (e.g., relatives or representatives acting on their behalf, such as veterans' service organizations); congressional correspondence and other Federal agencies. For ADDFS, record sources are VA benefits databases as set forth in ''58VA21/22—Compensation & Pension, Education and Rehabilitation Records—VA, ''38VA23—Beneficiary Identifier and Records Locator Subsystem—VA,'' and Department of Defense military personnel automated records systems.

[FR Doc. 99–11071 Filed 5–3–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 85

Tuesday, May 4, 1999

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 99–10355 beginning on page 20302 in the issue of Monday, April 26, 1999, make the following correction:

On page 20303, in the first column, under *Comments*, starting in the fourth line ''[insert date 30 days after date of publication in the **Federal Register**]'' should read ''May 26, 1999''.

[FR Doc. C9–10355 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences; Center for the Evaluation of Risks to Human Reproduction Review of Phthalates; Comment Request

Correction

In notice document 99–9488 beginning on page 18921 in the issue of Friday, April 16, 1999, make the following correction:

On page 18922, in the first column, under **Review of Phthalates**, in the first paragraph, in the 16th line ''di-n-butyl phthalate (84-75-3)'' should read ''di-n-hexyl phthalate (84-75-3)''.

[FR Doc. C9–9488 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Correction

In notice document 99–9817, beginning on page 19391, in the issue of Tuesday, April 20, 1999, make the following correction:

On page 19391, in the third column, in the second paragraph, in the second line, ''Rule 17a–3'' should read ''Rule 17a–13''.

[FR Doc. C9–9817 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-99-09]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 99–9881, beginning on page 19402, in the issue of Tuesday, April 20, 1999, make the following correction:

On page 19404, in the first column, in the 24th line from the end of the document, ''*Grant, 3/31/99,*'' should read ''*Denial, 3/31/99,*''.

[FR Doc. C9–9881 Filed 5-3-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–20]

Amendment to Class E Airspace; Macon, MO

Correction

In rule document 99–9786, beginning on page 19267, in the issue of Tuesday, April 20, 1999, the heading is corrected to read as set forth above.

[FR Doc. C9–9786 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
May 4, 1999

Part II

Environmental Protection Agency

40 CFR Part 9 et al.

Control of Air Pollution From New Motor Vehicles; Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 85, 86, 88 and 600

[FRL–6312–9]

RIN 2060–AH05

Control of Air Pollution From New Motor Vehicles; Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (referred to hereafter as ''EPA'' or ''the Agency'') proposed a new compliance assurance program (referred to as ''CAP 2000'') on July 23, 1998. This action adopts revised emissions compliance procedures for new light-duty vehicles and light-duty trucks contained in the NPRM. CAP 2000 simplifies and streamlines the current procedures manufacturers must follow to obtain pre-production emission certification of new motor vehicles. The new certification program provides the same environmental benefits as the current procedures while significantly reducing the certification cost for manufacturers, and giving manufacturers more control of production timing. EPA is also adopting a requirement that manufacturers test in-use motor vehicles to monitor compliance with emission standards. Manufacturers will test samples of in-use vehicles when they are approximately one and four years old. These test data will be used to improve the process which predicts in-use compliance and will determine the need for further action by the Agency or the manufacturer to address any in-use emission compliance problems. CAP 2000 will be implemented beginning with model year (MY) 2001 vehicles. Manufacturers are allowed to voluntarily opt-in to the CAP 2000 procedures beginning with the 2000 model year. EPA estimates that overall, manufacturers will save about $55 million dollars a year as a result of today's final rule.

DATES: This rule is effective May 4, 1999. The information collection requirements contained in 40 CFR part 86, as listed in 40 CFR part 9, have been approved by OMB and are effective May 4, 1999. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 1999.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air & Radiation Docket number A–96–50, located at Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. The docket may be viewed at this location between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Vehicle Programs and Compliance Division, US EPA, 2000 Traverwood, Ann Arbor, Michigan 48105, telephone (734) 214–4502, E-mail: hormes.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture and sell motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle manufacturers.

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.1801–01 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Copies of the Regulatory Documents

The preamble and Technical Support Document are available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary EPA Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below:

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/
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I. Introduction

Three programs are currently in place to ensure that automotive manufacturers design and build light-duty vehicles and light-duty trucks which comply with mandated emission standards for their useful lives (as prescribed in § 86.1805–01): certification, assembly line testing

(known as Selective Enforcement Audits or SEAs) and recall. These programs are described in more detail in section I.A. of the Notice of Proposed Rulemaking (63 FR 39655).

In addition to these emission control programs, EPA shares responsibilities with three other Federal agencies in the conduct of three fuel economy programs: the Corporate Average Fuel Economy (CAFE) program, the Fuel Economy Labeling program (and attendant issuance of the annual Gas Mileage Guide), and the Gas Guzzler Tax program. These programs were likewise discussed in some detail in the above-cited section of the Notice of Proposed Rulemaking (NPRM) for this rule.

The mutual desire of EPA and the automotive industry to streamline and improve upon these compliance programs fostered a productive regulatory development process culminating in the proposed regulation. One of the main elements of the proposal is a streamlined certification program structure which retains EPA's confidence in pre-production compliance determinations while reducing costs for manufacturers. To verify the compliance predictions made for certification, the final rule requires manufacturers to conduct testing of in-use vehicles and to report the results to EPA. The significant amounts of in-use data generated by this testing will enhance the Agency's recall program and can be used for studies of in-use vehicle emission control performance in general.[1] The in-use data will also obviate the need for most SEA testing.

Today's final rule incorporates comments received during the public comment period. Most of the comments received suggested minor wording or procedural changes. No fundamental changes to the basic structure of the CAP 2000 proposal have been made in the final rule. A discussion of certain comments received is contained in section II below. The Response to Comments document in the Docket contains a detailed discussion of other comments received and EPA's responses.

II. Content of the Final Rule

Unless otherwise indicated below, the discussion presented in the Preamble to the Notice of Proposed Rulemaking published at 63 FR 39653 is applicable to this final rule.

[1] Important in-use data are also available from other sources, including emission control repair statistics and I/M test results.

A. Certification Requirements

1. Durability Requirements

Durability Groups. EPA is adopting its proposal for manufacturers to divide their motor vehicles into groups called ''durability groups'' which include vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives, based on those characteristics of current-technology vehicles that most significantly affect the deterioration of emission control over time. Durability groups are based on engine type, fuel type, fuel system, catalyst construction, type of precious metals used in the catalyst, and relative engine/catalyst size and loading rates.

EPA estimates that based on the current vehicle product offering, the number of required durability demonstrations under CAP 2000 will be reduced by as much as 75 percent, a substantial savings for manufacturers. However, the Agency believes that the new durability grouping criteria, the requirement for testing the worst case durability vehicle, and the in-use verification program (also discussed below) would comprise a more accurate and effective emission control program than the current procedures and should result in significant environmental benefits.

To allow manufacturers flexibility in assigning durability groups, EPA is adopting provisions allowing manufacturers to use criteria other than relative engine/catalyst size and loading rates, provided that the criteria result in at least as many groups and do not group together dissimilar vehicles.

Durability Demonstrations. The Agency is adopting as proposed its durability demonstration regulations. Each manufacturer (except small volume manufacturers and test groups which have special provisions discussed below) will be required to design a durability process which predicts the in-use deterioration of the vehicles it produces. The durability process will be applied to a worst-case durability vehicle configuration as selected by the manufacturer. While the Agency expects manufacturers to act in good faith in designing adequate durability processes, the Agency requirement to obtain advance approval for these procedures should assure that well-designed programs are implemented.

In-use Feedback to Durability. Another important feature of today's rule is the requirement that manufacturers perform in-use testing on candidate in-use vehicles selected under the provisions of the in-use verification program described in section II. B. below. These in-use verification data will provide feedback information to manufacturers which will be used to improve their durability processes, if necessary.

EPA may also withdraw its approval to use a durability procedure for future certification if the Agency determines that the procedure does not accurately predict in-use emission levels.

Using aged emission control components to demonstrate compliance. EPA is adopting its proposal allowing manufacturers to demonstrate both durability and emission compliance by testing emission data vehicles installed with components aged to the equivalent of full useful life. The test data will represent the useful life emission levels for those vehicles, and can be compared directly to the emission standards without the use of deterioration factors. This certification compliance option will save manufacturers the cost of building and accumulating mileage on separate fleets of durability test vehicles. This process uses the same aging techniques as those used to calculate DFs in the normal durability program. Furthermore, the effect of using aged components directly on an emission data vehicle (EDV) is equivalent to applying a deterioration factor to an EDV which is calculated from those same aged components. EPA is also adopting its proposal to allow aged components to be used on more than one vehicle, under certain conditions.

The Agency is also adopting its proposal that the configuration with the highest expected level of in-use deterioration be selected as the durability data vehicle (DDV) configuration.

Evaporative/Refueling Durability Procedures

Evaporative family durability procedures were not proposed to be changed, but EPA requested and received comments about the criteria for designating evaporative/refueling families. Based on those comments, EPA is adopting some minor changes to the definition of evaporative/refueling family, described in more detail below.

2. Emission Compliance Requirements

Test Groups. EPA is adopting its proposal that manufacturers subdivide durability groups into units called ''test groups,'' for the purpose of demonstrating compliance with emission standards. One certificate of conformity with the emission standards will be issued per test group. Vehicles within a test group will have the following common elements: applicable

emission standards, engine displacement, number of cylinders, and arrangement of cylinders (e.g., in-line or V-shaped). EPA is adopting a number of provisions which allow manufacturers to further divide test groups to meet their needs without advance Agency approval. The Agency will also consider requests to combine test groups.

Emission Testing. The Agency is adopting its proposal that manufacturers test one emission data vehicle (EDV) in each test group. The EDV configuration would be the configuration expected to generate the worst case exhaust emissions within the test group.

One EDV per durability group will be required to be tested to demonstrate compliance with cold temperature carbon monoxide requirements, selected by the manufacturer as the worst case EDV within each durability group.

Evaporative/refueling compliance. A separate certificate of conformity will be issued for each evaporate/refueling family within a test group.

Durability and Emission Data Carryover. ''Carryover'' is a concept that allows the use of data generated in a previous model year to be used in a subsequent model year in lieu of additional testing. The Agency is adopting its proposal to allow carryover of durability and emission data when the manufacturer determines, using good engineering judgment, that the new vehicle configuration is capable of equivalent or superior emission or durability performance.

EPA is adopting its proposal disallowing the carry over of in-use verification test data. This is discussed separately in section II. B. below.

Use of Development Vehicles for EDVs. Currently, the regulations require that a unique vehicle be built to represent the EDV. This requirement was established to assure representativeness of the test results of the EDV. EPA established requirements that the vehicle have appropriate maintenance and sufficient representative mileage accumulation to stabilize emissions. Manufacturers typically run a second fleet of similar vehicles called ''development vehicles'' which they use to develop the production calibrations. These vehicles may have representative mileage accumulation and appropriate maintenance histories. The Agency is adopting its proposal that manufacturers may optionally use vehicles originally built to be development vehicles as EDVs for official certification testing.

The Agency believes that development vehicles can be representative vehicles which would generate accurate emission levels. The portability of the calibration from one prototype vehicle to another would be assured by the restriction that a development vehicle which was used to develop the calibration used on the EDV may not be used as the EDV itself.

Accept Statements of Compliance for Certification Short Tests. The certification short test was developed to assure that vehicles complying with the FTP exhaust emission standards could be accurately tested at State Inspection and Maintenance (I/M) test facilities without the need for special test procedures. The purpose of the certification short test is also to assure that manufacturers design their vehicles to comply with Inspection/Maintenance (I/M) tests used throughout the country and to account for the variation in test fuels and waiting times that vehicle owners might encounter.

The Agency is adopting its proposal to accept a statement of compliance to satisfy the certification short test compliance requirements (see §§ 86.094–8 and 86.094–9). The certification short test has been fully implemented since the 1996 model year. EPA's review of the CST data submitted by manufacturers thus far has indicated that test results are significantly beneath the standards, with values typically near zero. There have been no instances of test vehicles failing the standards.

Evaporative/Refueling Emission Testing. The Agency is retaining the current evaporative/refueling testing requirements. One vehicle in each evaporative/refueling family (the worst case EDV with the worst case evaporative and fuel tank hardware installed) would be tested for compliance with the evaporative and refueling requirements subject to the phase-in requirements of the applicable model year.

3. Confirmatory Testing

Manufacturer-performed confirmatory testing. The Agency is adopting the proposed requirements for certification and fuel economy confirmatory testing. Manufacturers will confirm most of their tests at their own facilities, if any of the following criteria originally proposed are met: (1) the vehicle version has previously failed a standard; (2) the vehicle exhibits high certification levels; (3) the fuel economy value of the vehicle is higher than expected; (4) the fuel economy value is close to a Gas Guzzler Tax threshold value; or (5) the fuel economy value is at a level which creates a potential vehicle class fuel economy leader. EPA will provide guidance to manufacturers on these criteria. Test results from the original manufacturer's test must be submitted to the Agency before any manufacturer confirmatory testing is conducted. The Agency will then indicate to the manufacturer whether the Agency will be performing any random or other confirmatory testing. Vehicle configurations selected for confirmatory testing by the Agency will not be required to be tested under the manufacturer confirmatory test program. Manufacturer confirmatory tests will be considered ''official'' and will be used in certification compliance determinations and fuel economy calculations. Any confirmatory tests performed by EPA will be considered official.

The Agency is also adopting its proposal that manufacturers conduct retests whenever the manufacturer's original fuel economy test result and the manufacturer's confirmatory result fail to correlate satisfactorily. The criteria for satisfactory correlation is the three percent difference in fuel economy currently used in EPA's confirmatory test program. In lieu of conducting retests the manufacturer may accept the lowest fuel economy data for the purpose of calculating the fuel economy values. This retesting procedure assures that representative fuel economy data are generated during the manufacturer-funded confirmatory test program. The retest criteria are the same that the Agency has been employing on EPA retests. These have proven satisfactory at safeguarding the integrity of the fuel economy values at a reasonable cost in terms of additional tests conducted.

Conditional Certification pending Confirmatory Testing. EPA is adopting its proposal to allow conditional emission certification for a test group (contingent upon manufacturer request and subject to Agency approval) when the confirmatory test scheduled for testing at the EPA facility has not yet been completed. To be eligible, the manufacturer must attest, and EPA have reason to believe, that the vehicle awaiting confirmatory test will ultimately comply with the standards when tested.

The condition for certification is the same as that for the current ''alternate procedure'' running change provisions (see § 86.082–34). If the Administrator determines that the confirmatory test results in noncompliance with any standard, then the manufacturer will be so notified. Upon notification of this determination, the manufacturer must immediately suspend production of all vehicles covered by this certificate (or such fraction of the vehicles covered by the certificate that the Administrator determines to be affected) and the certificate of conformity will be

suspended (pending a hearing). As a further condition of the certificate, the manufacturer must agree to recall all vehicles which the Administrator determines to be in noncompliance with the applicable standards, and remedy such noncompliance at no expense to the owner.

4. Fuel Economy

Conditional Fuel Economy Values Pending Confirmatory Testing. In addition to conditional certification, EPA is adopting its proposal allowing the use of conditional fuel economy labels. Manufacturers are permitted to calculate and use fuel economy labels prior to the completion of scheduled EPA confirmatory testing, provided that certain conditions are met.

Once the confirmatory testing is completed, the manufacturer must recalculate, if necessary, all the affected fuel economy label values. The recalculated label values must be used for labeling on future production under either of the following circumstances:

(1) If the newly calculated label value is at least 0.5 mpg lower than the original value, the manufacturer must use the recalculated label value and annual fuel cost on the labels placed on all future vehicles produced 15 days, or more, after the completion of the confirmatory test.

(2) If the newly calculated label value is at least 0.1 mpg lower than the original value, the manufacturer must use the recalculated label value to determine Gas Guzzler Tax liability. The tax paid to the IRS must reflect the recalculated value for all vehicles produced. The gas guzzler tax statement required under the current provisions of 40 CFR 600.307–95(f) to be placed on the fuel economy label shall reflect the recalculated values on all future vehicles produced 15 days, or more, after the completion of the confirmatory test.

All confirmatory test results must be used in CAFE calculations.

EPA is adopting its proposal requiring manufacturers to submit a copy of the CAFE calculations directly to the National Highway Traffic and Safety Administration (NHTSA) concurrent with the submission to EPA.

5. Small Volume Provisions

EPA is adopting its proposal to increase the number of sales which define small volume manufacturers to U.S. sales of less than 15,000 per model year (including light-duty vehicles, light-duty trucks, heavy-duty vehicles and heavy-duty engines). Similarly, EPA is adopting its proposal to allow any manufacturer to use small volume certification procedures for any test groups, provided that the combined U.S. sales are below 15,000 units per model year.

Any certification options provided under CAP 2000 for large volume manufacturers would be available to small volume manufacturers (e.g., bench-aged components for durability, etc.).

6. Information Requirements

Application for certification. EPA is adopting its proposal that manufacturers submit applications for certification on the basis of durability groups. The application will be submitted in two parts:

Part 1 consists of general information about the manufacturer and the entire product line, durability group descriptions, evaporative/refueling family descriptions, OBD information and information specific to each test group. This is the information generally needed by EPA to make certification decisions.

Part 2 is information which is primarily needed by EPA for post-certification compliance purposes. It includes such information as part numbers of each emission related component for each engine code, certain calibration specifications, owners manuals, service manuals and technical service bulletins. This information is necessary for the Agency to perform its in-use compliance activities such as identifying mis-builds (non-certified vehicle configurations), evaluating manufacturer defect reports, and conducting in-use recall testing programs.

Timing of information submissions. Part 1 of the Application is to be submitted prior to certification and Part 2 is to be submitted by January first of the applicable model year (e.g. a model year 2001 Part 2 Application would be due by 1/1/2001). Any updates to the Part 1 will also be due by January first of the model year.

A final, end-of-model-year Application update (including any updates to Parts 1 and 2 reflecting any running changes occurring since January 1 is required to be submitted by January first of the following model year (for example, the final Application update for model year 2001 would be due by 1/1/2002).

Based on comments received, EPA is increasing the time allowed to submit the Part 2 application from 30 days to 60 days for those test groups certified close to the end of January 1 of the applicable model year.

B. In-Use Testing Requirements

1. Overview

EPA is adopting the in-use testing program generally as proposed. The program consists of two basic categories of manufacturer-funded in-use testing: (1) in-use verification testing of vehicles representing virtually all of the test groups produced by each manufacturer in each model year and, (2) in-use confirmatory testing consisting of more rigorous testing of test groups or subsets of these test groups (limited to transmission types) which, during the in-use verification testing, demonstrated potentially high emissions.

2. In-Use Verification Testing (IUVP)

This element of the program will provide the Agency and the industry with emission data feedback from vehicles driven under real-world conditions. The data generated from the IUVP will be used to assess and improve the effectiveness of the manufacturer's certification durability and emission demonstration processes. In addition, the IUVP data will be used to determine the need for further manufacturer funded in-use testing (In-Use Confirmatory Testing) which may be used by the Agency in determining whether an emissions recall is necessary.

The basic elements of the proposed IUVP are low mileage (10,000 mile minimum vehicle mileage, approximately one year of operation) and high mileage (50,000 mile minimum mileage and approximately four years of operation) emission testing of in-use vehicles. These mileage and age test points were selected to provide feedback to the Agency and the industry on the emission performance of vehicles at both an early point in their operating life (to allow early identification of any problems which occur in production or early in the life of the vehicle to minimize the emission impact of the defect or deficient design), and at a point well into the vehicle's statutorily-defined useful life (to identify and correct any problems which occur only after extended in-use operation) but not at such a high mileage that high emitting vehicles would not be identified until the end of their useful life. The total number of vehicles a particular manufacturer would be required to test for the IUVP under the requirements of this proposal would be dependent upon the number of test groups in the manufacturer's product line and the number of sales within those groups. The sample sizes required for the low and high mileage test programs and test group sales volumes

are intended to reflect the increased potential for emission contribution by high production test groups, the increased likelihood of problems occurring as vehicles reach higher mileage, and the desire of the Agency to minimize the resources required to conduct the program.

Additionally, EPA is adopting its proposal that a manufacturer may increase the required sample size specified for a specific IUVP test group sample with prior EPA approval prior to the initiation of the additional testing. The Agency believes that prior approval of an increase in sample size is needed to prevent the unrestrained addition of vehicles which could mask or dilute potential emission problems.

EPA was requested to change the proposed requirement that one high-mileage vehicle in the in-use verification fleet have at least 75,000 miles to be at least 75 percent of full useful life. This purpose of the request was to harmonize with the California ARB proposed regulations, and EPA has done so in the final rule.

EPA is adopting its proposed regulations for vehicle selection and procurement protocols. These procedures and protocols provide assurance that the in-use vehicles will have experienced typical real-world use and maintenance, and will screen out only those vehicles which are tampered, unsafe to test, or are in such a condition that restoration to a test-ready condition would be too costly. To preclude underestimating the emissions of the in-use fleet through possible climate-related bias (the Agency believes vehicles operated primarily in warm weather areas may be subject to less harsh durability conditions than those operated in cold weather), and on the basis of a comment received, EPA has modified its proposal requiring that a certain number of vehicles in each sample be procured from north of the 40 degree parallel line. Instead, those vehicles must be procured from locations with a heating degree day 30 year annual average equal to or greater than 4,000. The reasons for this change are discussed in section D.1. below.

As discussed above in section II.A., in the event that the IUVP data from a test group sample at either the low or high mileage test point exceed certain criteria, EPA is also requiring that manufacturers perform an analysis explaining why their durability processes are or are not still capable of accurately predicting in-use performance. EPA is also adopting as proposed its provisions for the in-use testing of small volume manufacturers/test groups and alternative fueled vehicles.

EPA is adopting its proposal that the FTP and the US06 portion of the supplemental FTP (SFTP) be performed on each in-use vehicle tested. Manufacturers will determine the composite in-use SFTP emission level by combining the in-use US06 and in-use FTP test levels with the test level from the pre-production certification air conditioning test (without deterioration factors applied). The A/C portion of the supplemental FTP is an extremely resource intensive test because of the test cell requirements (a special environmental chamber). In evaluating the utility of the data which would be obtained versus the high cost of conducting an in-use A/C test cycle as part of the in-use verification program, EPA decided not to require testing on the A/C cycle. Included in this evaluation was EPA's belief that for emissions deterioration purposes, the US06 portion of the test can be directionally predictive of the results of the A/C cycle. EPA may always conduct its own in-use testing to confirm compliance, and if future indications are that noncompliance with the A/C cycle may be an issue, can revisit this decision in a future regulation.

EPA is adopting its proposal requiring a single in-use evaporative test and on-board refueling loss test per evaporative/refueling family at both the low and high mileage test points. As of this final rule, ongoing evaporative test procedure streamlining efforts between EPA, California ARB and industry have not led to a unified procedure. Therefore, EPA is adopting its proposed in-use evaporative/refueling testing requirement using the test procedures described in subpart B of part 86.

Because EPA's emission standards currently apply at high altitude as well as low altitude, EPA is adopting its proposal that one vehicle per test group be tested under high altitude conditions for FTP. EPA is proposing to require this testing only at the high mileage test point in order to minimize the expense and facility constraints, if any, associated with this testing.

3. Manufacturer Funded In-Use Confirmatory Testing

Today's final rule also includes regulations which create a manufacturer funded in-use confirmatory testing program. These are unchanged from the proposed rule. This program requires manufacturers to conduct additional in-use testing of a test group when the IUVP data for the test group exceeds a specified trigger level. Additionally, EPA could target testing of a transmission-type subset of a test group if emissions shown by the entire test group sample meet the specified triggering criteria.

The criteria that will trigger confirmatory testing (a mean of 1.30 times the standard with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point) are based upon the emission standards to which the test group was originally certified.

The Agency intends to periodically review and, if necessary, revise these criteria, and intends to do so after it has gathered sufficient information to support any revisions.

C. Other Requirements and Topics

1. Fees

EPA is adopting its proposal to continue collecting a fee on a per-certificate basis. Because the test group will become the unit of certification, a fee will be collected for each test group to be certified. The new fee schedule will be the same as proposed:

Federal signed	$27,211
California only signed	8,956
Fed only unsigned	2,738
Cal only unsigned	2,738

EPA is adopting its proposal to retain the waiver provision in the current fee regulations when the fee exceeds 1% of the aggregate projected U.S. sales of vehicles covered by the certificate (§ 86.908–93).

2. Miscellaneous Corrections and Changes

EPA is adopting other requirements as proposed, including language prohibiting crankcase emissions from all light-duty vehicles, rather than from Otto-cycle and methanol-fueled diesel light-duty vehicles, the elimination of high altitude exemption provisions for those vehicles and trucks meeting specific design limitation criteria (see §§ 86.094–8(h) and (i)), and a revision making the Agency's defeat device policy applicable to all types of fuels rather than just to gasoline.

3. Incentives To Encourage Better In-Use Emission Performance

The Agency is adopting its proposed regulatory language that will allow the Agency to waive or modify certain other regulatory requirements to allow the structuring of an incentive program. In the NPRM, the Agency requested and received a number of suggestions regarding potential incentive rewards, and how an incentive program could be structured (discussed in more detail in the Response To Comments document in the docket). EPA will continue to work with interested parties in

developing an effective incentive program.

4. Cross References in Other EPA Regulations

EPA has amended regulatory language which refers to Subpart A of Part 86 so that it also references Subpart S. Regulations affected include Part 85, subparts B, G, H, L, P, Q and R of Part 86, Part 88, and Part 600. Also, each part or subpart which includes the terms ''engine family'' and/or ''engine control system'' has been amended to clarify that those terms can be construed to mean ''test group'' or ''durability'' group in the context of Subpart S regulations.

D. Changes From the Proposed Rule

EPA is adopting as final its proposed rule, with a few minor changes and corrections. The most significant changes are discussed below. A more detailed discussion about the comments received is in the Response to Comments document in the docket for this rule.

1. 40 Degree Latitude Requirement for In-Use Verification Vehicle Procurement

EPA proposed that at least a certain number of vehicles in each test group be procured from north of the 40 degree parallel line to preclude underestimating the emissions of the in-use fleet through possible climate-related bias. The 40 degree north latitude requirement contained in the proposed regulations was intended to address the Agency's belief that vehicles operated primarily in warm weather areas may be subject to less harsh durability conditions than those operated in cold. The 40 degree line extends across the United States from Cape Mendocino, CA to Trenton, NJ. Major metropolitan areas in this region account for about 24% of the U.S. population. Vehicles could be procured from any area above the 40 degree latitude line. While this criterion captures a significant portion of cool weather areas, it did exclude a few major metropolitan areas which EPA would consider to be cool and would not wish to exclude from participation in the in-use verification program. Since the proposal, EPA has determined that there is a more scientifically-based method to ensure the acquisition of cooler-climate in-use vehicles, which will allow for the inclusion of previously excluded areas, and conversely, will not exclude any significant geographic areas where in-use vehicle procurement would likely occur. This method involves using readily available climate data known as ''annual average heating degree day'' (HDD) data. This data is compiled by various agencies, including the National Climatic Data Center (NCDC) of the National Oceanic and Atmospheric Administration (NOAA) and the Energy Information Administration (EIA) of the Department of Energy (DOE), and is readily available from these Agencies, both electronically and in hard copy. The Department of Energy, defines a heating degree day as ''the number of degrees per day that the daily average temperature (the mean of the maximum and minimum recorded temperatures) is below a base temperature, usually 65 degrees Fahrenheit, unless otherwise specified * * *''.

Instead of procuring vehicles from above the 40 degree N latitude line, manufacturers will instead be required to procure vehicles from areas with at least 30 year annual average HDDs of 4,000. Four thousand was chosen as the criterion because limiting the criterion to areas with higher annual HDDs (for instance, 5,000) would exclude some major metropolitan areas that would have been covered with the 40 deg. latitude criterion and which EPA considers to be cooler climate areas, such as New York City, Newark, NJ, Seattle, WA, and Portland, OR., which the Agency did not intend to exclude. In fact, the 4,000 annual HDD criteria will now include formerly excluded major metropolitan areas as well, such as the Baltimore-Washington corridor. Overall, the area of the United States covered by the criteria is more extensive than the area defined by the 40 degree latitude line and will ensure that in-use test data is obtained from vehicles exposed to harsher weather. Additional major metropolitan are now included in Missouri, Illinois, West Virginia, Colorado, Utah, Kansas, Arizona, New Mexico, Oklahoma, and Kentucky. Major metropolitan areas in this region account for about 30 percent of the population. This change is also responsive to a comment received, discussed in more detail in the response to comments document. Accordingly, EPA is revising its regulations.

2. NLEV and CAP 2000

The California ARB has adopted a regulation parallel to CAP 2000. This will supercede the current ARB regulations which apply to NLEV-certified vehicles. Accordingly, EPA has modified the NLEV regulations in subpart R of part 86 to accommodate the incorporation of the California ARB CAP 2000 regulations into the NLEV certification process.

An incorrect cite was inadvertently given in section 86.1801–01 of the proposed regulatory language, which referred the reader to Subpart A for NLEV requirements. This has been corrected.

Regulatory language contained in § 86.096–30 pertaining to NLEV certification was inadvertently omitted in CAP 2000 and has been added back under § 86.1848–01.

3. High Altitude In-Use Testing

The preamble language for the NPRM incorrectly stated that EPA was not proposing to include the results of high-altitude in-use verification testing in the data to be used to determine if a test group met the 1.30 times the standard criteria (modified from the 1.3 in the proposed rule to preclude rounding errors) which triggers manufacturer in-use confirmatory testing. The proposed regulatory language did reflect the Agency's intention to include high altitude data in the calculation. The inclusion of high altitude data is appropriate given that the emission standards are ''all altitude,'' which require compliance to the same numerical standard regardless of altitude.

4. Regulatory Language Section Numbering

Comments were favorable about the general layout and numbering scheme in the proposed rule. EPA is retaining this layout, but has renumbered (but not reordered) a portion of the final regulatory language to leave some blank ''Reserved'' sections. Doing so gives the Agency more flexibility in accommodating any future regulations and is in keeping with the Administration's ''Plain Language'' directive which suggests that Agencies leave reserved sections in new regulations for that purpose.

5. Evaporative and Refueling Durability Procedures

A commenter requested that EPA clarify its language on the service accumulation methods for both evaporative and refueling durability procedures.[2] Specifically, it was requested that EPA allow bench aging procedures as an alternative durability method. While EPA believes that the proposed language allows for such methods, language specifically permitting bench aging for evaporative and refueling durability procedures has been added to the final rule for clarity.

6. High Altitude Certification Testing for Evaporative and Refueling Compliance

The proposed regulations incorrectly included SFTP testing at high altitude

[2] Ref. comments.

as part of the evaporative/refueling test requirements. Because SFTP standards are not applicable at high altitude, the final rule has deleted the requirement for SFTP testing.

7. Stabilized Vehicle Requirements

The proposed regulatory language allowed manufacturers to consider vehicles with 2,000 miles accumulated on them as ''stabilized'' for emission testing purposes. A commenter requested the EPA clarify that this is a minimum mileage.[3] Because this was EPA's intention, EPA has modified the language accordingly.

8. Evaporative/Refueling Family Determination.

Both during the development of the NPRM and in comments received after the proposal, EPA was requested to revisit the regulatory criteria for determining evaporative/refueling families. EPA is adopting some of these suggestions in the final rule. In particular, it is adding the criterion of fuel tank composition, and deleting the criteria of fill limiter system, vapor/liquid separator, vapor hose diameter, canister location, and onboard diagnostic hardware and calibrations. EPA believes that the eliminated criteria are calibrational in nature and have less impact on the durability of the evaporative/refueling system. These changes are not expected to significantly increase or decrease the number of evaporative/refueling families, thus no change is being made to the cost analysis.

9. Evaporative/Refueling In-use Verification Testing

In the preamble to the NPRM, EPA inadvertently stated that the in-use verification testing for evaporative/refueling emissions would not begin until the 2004 model year. The proposed regulatory language, which is correct, requires evaporative/refueling in-use testing to be performed on 2001 model year vehicles for the high mileage testing (50,000 miles/fourth year of service, meaning that the first testing will not occur until the 2004/2005 calendar year time frame). Because EPA has delayed implementing all low mileage in-use testing until the 2004 model year, this will provide a number of years of lead time for manufacturers to acquire or arrange for the necessary evaporative/refueling testing facilities.

[3] Ref. comments.

E. Comments Relating to EPA's Legal Authorities and Factual Basis for CAP 2000

EPA received comments from two organizations[4] challenging whether EPA has met its statutory obligations and claiming EPA failed to provide a factual basis for the CAP 2000 proposal. The following discussion details the specific comments and EPA's responses.

1. Comment

Commenters suggested that EPA's proposal fails to establish methods and procedures for testing, ''by regulation,'' as required by section 206(d) of the Clean Air Act. Commenters claim that to be consistent with section 206, EPA must either aggregate the manufacturer-specific test procedures in the certification regulations it proposes for public comment, or require that manufacturer-specific test procedures be developed by regulation on a case-by-case basis only after public notice and opportunity for comment.

EPA's Response

Section 206(a)(1) states that the Administrator shall test, or require to be tested in such a manner as deemed appropriate any new motor vehicle or motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with EPA emission standards. Section 206(d) requires that EPA issue regulations that establish methods and procedures for making tests under section 206.

The regulations proposed by EPA would require that manufacturers develop programs demonstrating the durability of their emissions control systems, as part of demonstrating compliance with applicable emission standards. The regulations establish the criteria for EPA approval of a durability program, and provide for required in-use testing to check on the accuracy of the durability demonstration. EPA's proposed regulations describe design requirements each manufacturer's durability program must satisfy for EPA approval. Manufacturers are required to show that their durability processes are designed to cover a significant majority of deterioration rates expected by vehicles in actual use. These durability demonstration programs are used in the certification process to establish the general rate of emission deterioration a similar group of vehicles are expected to experience over time. This rate of deterioration is applied, via deterioration factors or other means, to data generated from emission test vehicles within the durability group to demonstrate whether a vehicle will meet emission standards over its useful life. In essence, EPA's proposed regulations would establish a case-by-case, adjudicatory process and criteria for acceptance or rejection of a manufacturer's durability program. Commenters's claim that this is unlawful under section 206(d), and that EPA's regulations must themselves contain the specific details of each manufacturer's durability program (whether adopted in a single, aggregate rulemaking, or future case specific rulemakings). The issue raised by commenters is therefore whether EPA may reasonably exercise its authority under section 206(d) to establish an adjudicatory type procedure as proposed.

Whether section 206 authorizes or prohibits such agency action is a matter of statutory interpretation. The first question is whether Congress has directly spoken to this issue, such that Congressional intent is clear on this specific matter. If the intent of Congress is clear regarding a statutory provision, the Agency must follow that intent. If Congress' intent is not clear on this specific issue, then the question is whether EPA's interpretation of section 206(d) is a reasonable way to implement the authority delegated in that provision. *Chevron* v. *NRDC*, 467 U.S. 837, 842 to 844 (1984). Traditional tools of statutory construction are used to answer these questions. *Id*.

This issue can be seen as two distinct questions. The first is whether establishing methods and procedures by regulation requires that all the specific details related to testing must be contained in the regulations themselves, prohibiting establishment of an adjudicatory process to determine these specific details. The second question is whether a durability demonstration program is part of ''making tests'' subject to the requirements of section 206(d).

For the first question, the terms used by Congress, ''establish methods and procedures,'' are not defined in the Clean Air Act. These terms are general in nature, and can be readily interpreted as covering a broad range of agency action. ''Methods'' and ''procedures'' would encompass both detailed prescriptions of how to conduct a test, as well as broad general provisions, such as a requirement that testing be conducted using good engineering practices. These terms are broad enough in nature to include a process for future determination of the specific details of a test program, based on submission of a proposed program for EPA review according to pre-set criteria. The term

[4] The Ethyl Corporation and Envirotest.

''establish'' also appears general enough to include both the establishment of detailed specifics at one time, as well as establishment of a process to set detailed specifics at a future point. The text of section 206(d) does not appear to indicate a clear congressional intent to prohibit the adjudicatory approach proposed by EPA, but instead employs terms that are broad and general in nature, allowing a variety of potential ways to establish methods and procedures for testing. The legislative history is limited, and does not provide any indication of a contrary congressional intent. Clean Air Amendments of 1970, Conference Report No. 1783, 91st Congress, 2d S (1970).

In this case, Congress did not express a clear intent that EPA may not exercise its authority under section 206(d) by setting up an adjudicatory process in the regulations. Instead, Congress's grant of authority provides EPA with substantial discretion in how to ''establish methods and procedures'' for conducting tests under section 206(d). Since Congress has not specifically addressed the question at issue, EPA's interpretation of this grant of authority should be upheld if it is a reasonable way to implement Congress' intent. *Chevron* at 844.

The adjudicatory process set up by EPA's regulations is an efficient way to benefit from each manufacturer's expertise and knowledge of the durability of their vehicles. For example, manufacturers will be able to tailor their vehicle aging procedures to the specific details of the hardware used on their vehicles, and the way it is expected to deteriorate over time, as well as any unique driving and usage patterns of their customers, and thus account for the effect that these hardware and usage patterns have on emission deterioration and emission control system designs. As discussed in the NPRM (63 FR 39660, (July 23, 1998)), EPA believes that the resulting manufacturer durability programs should improve the effectiveness of EPA's vehicle compliance programs, by improving the ability of the new motor vehicle certification program to predict and account for in-use durability and deterioration of the emissions control system.

As described in the NPRM, EPA has been approving manufacturer alternative durability programs under RDP–I for several years. Two major types of durability processes have emerged from the RDP–I experience: whole vehicle mileage accumulation cycles and bench aging procedures. The whole vehicle aging concept involves driving vehicles on a track or dynamometer on an aggressive driving cycle of the manufacturer's design. The bench aging procedures involve the removal of critical emission components (such as the catalyst and oxygen sensor) and the accelerated aging of those components on an engine dynamometer bench. Through the approval process, EPA has been requiring that manufacturers compare the catalyst operating temperatures during the AMA [5] and during the proposed durability method as well as average speeds, acceleration rates and the like for whole vehicle methods. In evaluating the comparisons, EPA believes that the programs are more effective than the current program at predicting the deterioration that occurs in actual use. EPA believes that allowing manufacturer-specific durability programs to continue is appropriate.

As it has in the past under the RDP–I program, EPA will require that manufacturers provide data prior to certification showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line which would ultimately be covered by this procedure for both whole vehicle and bench-aging durability methods. Manufacturers have varying sources of data available, such as emissions data, driver survey data, catalyst temperature history data and catalyst conversion efficiency data. Generally these data are compared to manufacturer in-use data to determine how broadly the deterioration factors reflect the overall vehicle fleet. EPA determines, based on these data whether to approve the durability process. EPA believes that the various whole vehicle and bench aging programs are more effective than the current program at predicting the deterioration that occurs in actual use.

EPA also believes an adjudicatory process is a more efficient method of reviewing and approving or rejecting such durability programs, avoiding the time and resources that would be necessary to promulgate by rulemaking each manufacturer-specific durability program. EPA believes that the adjudicatory process proposed and adopted in this rule is a reasonable way to establish manufacturer-specific durability programs that are expected to provide better information about in-use emissions deterioration, for use in making certification decisions.

[5] The driving schedule prescribed in Appendix IV of Part 86.

EPA's interpretation of the statute is consistent with prior EPA interpretations of section 206. For example, EPA has never interpreted section 206 as requiring promulgation of every aspect of each manufacturer durability program. In the past, the regulations have set up a durability process that required manufacturers to accumulate mileage on a pre-production vehicle over a prescribed driving cycle from 100,000 miles as a way to simulate deterioration over the useful life. The regulations described the driving course, the speed for each lap, stops, and similar details. The regulations do not describe when drivers must be changed, how much driving per twenty-four hours, leaving many other details for case-by-case decision making by EPA. Another example is 40 CFR 86.090–27, Special Test Procedures. Under this section, EPA interpreted section 206 to allow the Administrator, based on a written application from a manufacturer, to prescribe tests procedures, other than those prescribed in the CFR, for a vehicle not susceptible to satisfactory testing in 40 CFR part 86. This is an adjudicatory process where the EPA approves alternative testing in advance, without promulgated minimum requirements.[6] Another example is EPA's durability regulations for certification of light-duty trucks, which have permitted manufacturers to use their own methods, based on good engineering judgment, to determine DFs, subject to review and approval by EPA. (See § 86.094–24(c)(2)). EPA set up this adjudicatory process in the regulations, providing future case by case EPA approval of the results of a manufacturers' durability program.

In sum, EPA does not believe that Congress intended to prohibit reasonable regulations under section 206(d) that set up an adjudicatory process to review and approve manufacturer specific durability programs. EPA believes that the process set up in the regulations is a reasonable exercise of the general authority provided to EPA in section 206(d).

The second issue raised by the comment is whether a manufacturer's durability program is part of making a test such that it is subject to the requirements of section 206(d). However, EPA does not believe that it is necessary to decide this issue. If durability processes are subject to section 206(d), then as described above EPA believes it has the authority to allow an adjudicatory process to

[6] EPA's regulations have included this kind of provision for approval of alternative test procedure for many years.

determine the specific, detailed portions of a manufacturer's durability program. If the manufacturers' durability processes are not subject to the requirements of section 206(d), then EPA's regulations clearly do not violate that provision. In either case, EPA believes it has authority under section 206(a)(1) to require durability programs as part of the testing performed for purposes of certification. Section 206(a)(1) allows EPA to require testing ''in such a manner as he [the Administrator] deem appropriate.'' This provides EPA the discretion to require manufacturer specific durability programs as part of the certification process.

2. Comment

Commenters stated that EPA's proposal is contrary to section 206(e), which obligates EPA to disclose certification information allowing purchasers to determine the ''comparative performance'' of vehicles. Congress contemplated a form of ''environmental'' competition among automobile manufacturers. Commenters claim that the competition has not developed, at least in part, due to EPA's decision to ''maintain the secrecy of the certification test procedures.'' EPA Air Docket #A–96–50 item IV–B–10 at 6. Comparisons cannot be made without an accurate understanding of the test procedures employed to generate the certification emission data.

EPA Response

Section 206(e) provides that:

The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

Section 206(e) of the Clean Air Act requires EPA to make available to the public the *results* of tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under section 206(a). Congress' intent is clear by looking at the words of the statute. Congress did not require that EPA make available the specific details of test procedures employed to generate the emissions data, or the durability programs employed in the certification process. Congress stated that the results of the tests are to be made available to the public.

EPA makes available all emission test data which are used to make certification compliance determinations as required by section 206(e). Certification levels are posted annually at http:www.epa.gov/OMSWWW/gopher/Cert/Veh-cert/Cert-Tst/. The report contains certification levels (projected emission levels at the end of the useful life miles of a vehicle) and deterioration factors used to compute the certification levels. Vehicles are described by vehicle model, EPA engine family name, manufacturer family name, number of cylinders, method of fuel system, emission control system, engine code, etc. EPA believes the information is described in a nontechnical manner and provides purchasers with enough information to compare performance of vehicles in meeting emissions standards.

In any case, the regulation adopted today establishes an adjudicatory process to implement section 206 (a) and (d), and provide reasonable information to make certification decisions. The regulations adopted here were not proposed under and are not meant to implement section 206(e). The kind of information presented to the public under section 206(d) is not at issue in this rulemaking, as this regulation neither releases information to the public, nor limits what information may or may not be released in the future under section 206(e).

3. Comment

Commenters suggest that Congress clearly contemplated that EPA would require testing of new motor vehicles or new motor vehicle engines to ensure compliance by the vehicle or engine with applicable emission standards. New motor vehicles are equipped with new components, not with one or more artificially aged components. Because EPA's proposal would allow testing of what is in essence a ''hybrid'' vehicle which includes such components, EPA's proposal is facially inconsistent with the clear mandate of section 206.

EPA Response

Section 206(a)(1) states that the Administrator shall test, or require to be tested ''in such manner as he deems appropriate,'' any new motor vehicle or new motor vehicle engine submitted for a certificate of conformity with emission standards. ''New motor vehicle'' is defined in section 216 as a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.'' In section 216 ''new motor vehicle engine'' is defined similarly.

The authority to require testing ''in such a manner as he deems appropriate'' under section 206(a)(1) clearly provides EPA with the discretion to allow bench-aging of components as part of the procedures to prepare a vehicle for durability related emissions testing. As described before, it is a reasonable exercise of this broad authority provided in section 206(a)(1) for EPA to determine that bench aging of components may be approved as part of a manufacturer's durability program. EPA also has general authority under section 301(a)(1) to approve the use of such components on durability test vehicles. (''The Administrator is authorized to prescribe such regulations as are necessary to carry out his function under this chapter.'')[7]

4. Comment

Commenters claim that before EPA can demonstrate that each bench-aging or alternative whole vehicle aging technique complies with the substantive requirements of section 206, the Agency must first provide a complete and thorough description of each bench-aging or alternative whole vehicle-aging technique proposed to be allowed. Without this information, it is simply not possible to comment upon the merit of the alternative testing techniques.

EPA Response

The comment is based in part on the view that each manufacturer-specific durability process must be adopted through rulemaking. As discussed previously, EPA believes that a regulation setting up an adjudicatory process for approval of manufacturer-specific durability programs is not prohibited by the Clean Air Act and therefore rulemaking for each durability program is not required.

Commenters have been provided an opportunity for meaningful comment in compliance with section 307(d) of the Clean Air Act. EPA believes the provisions of section 307(d) have been satisfied in this rulemaking and the public has been provided an opportunity to comment on the adjudicatory process and durability program requirements. EPA proposed the criteria for establishment of the specific durability program

[7] In addition, this is not inconsistent with the definition of ''new motor vehicle'' in section 216. That definition looks at when title is received by the ultimate purchaser, and does not place any restriction related to whole vehicle aged or bench aged parts. A test vehicle would meet the definition of a new vehicle whether it has bench aged or whole vehicle aged parts, as long as title has not transferred to the ultimate purchaser.

requirements that manufacturers must satisfy for EPA approval of their durability program. These criteria enable EPA to evaluate the expected in-use deterioration of these durability groups, the parameters of the durability demonstration, and the compliance determination. EPA described in the preamble the kinds of information generated and durability programs used under the current RDP–I regulations. In addition, EPA placed in the docket a draft technical support document outlining manufacturer data and other information about the current revised durability program (RDP–I). EPA Air Docket #A–96–50, item III–B–2. Topics included (1) a discussion of the correlation procedures used by the Agency to assure that accurate tests are run by manufacturers, (2) a discussion of the information collected from manufacturers which is not directly used in reaching the decision to grant a Certificate of Conformity, (3) a discussion of the effect of ambient weather patterns (warm versus cold climates) on in-use deterioration and recalls in support of the CAP2000 requirement that some vehicles tested be recruited from cold weather locales, and (4) a discussion of the rationale used in proposing a durability group concept for CAP2000 rather than the current engine family definition. The comment period was extended to provide the public with time to analyze the support document. EPA believes the information provided to the public has allowed opportunity for meaningful comments.

5. Comment

A commenter claims that EPA's statement in the NPRM that ''most manufacturers have demonstrated that essentially no engine out deterioration is experienced in their current product'' is one of the ''basic premises underlying its proposal'' for manufacturer-specific durability programs. EPA Air Docket #A–96–50 item IV–D–10 at 11, citing 63 FR 39658

EPA Response

The NPRM language has not been characterized in its proper context. EPA's assertion in the NPRM is that new ''durability groups'' for exhaust emissions combine vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives. In the past ''engine families'' were grouped by engine-based parameters because most emission reductions were expected to occur through modifications to the engine operating characteristics. As described in the NPRM, today's vehicles accomplish most emission control through catalytic conversion. In essence, engine-out deterioration is not experienced. Therefore, the past groupings (engine-based parameters that affect engine-out emissions) are less useful for evaluating the emissions durability of today's vehicle technology. EPA is requiring manufacturers to group vehicles based on catalyst parameters for more effective groupings.

Broadening the grouping criteria for durability demonstrations, by itself, may add some variability in emissions as compared to the current engine family definition; however, the Agency believes that the proposed broader durability groups coupled with worst case durability vehicle selections and in-use verification program would comprise a more accurate and effective emission control program than the current procedures and result in significant environmental benefits.

The accuracy of EPA's statement is discussed in the next response to comment.

6. Comment

The commenter expressed several concerns about engine-out deterioration from the data presented in the Technical Support Document (TSD). In particular they noted: (1) Using General Motors' data, 4 of 9 vehicles display deterioration in engine-out emission with respect to at least one of the emission constituents. (2) Using Chrysler's data, 28 of 34 vehicles display deterioration in engine-out emission with respect to at least one of the emission constituents. The commenter expressed further concern that most of the Chrysler data is on Tier 0 vehicles. (3) Based on Table 1 of the TSD, the commenter interprets that Toyota has presented data to the Agency that their engines show significant engine-out deterioration. Based on this data the commenter takes issue with the Agency's statements in the NPRM that ''most manufacturers have demonstrated that essentially no engine out deterioration is experienced on their current product''.

The commenter also expressed concerns about bench aging versus whole vehicle aging. In particular they noted: For Honda, Ford and Toyota (which they indicate have approved track and bench procedures) 8 of 8 vehicle programs have no failing data; however for GM (which used exclusively a bench aging cycle) 2 of 8 vehicle programs experienced one or more test failures. Based on this data, the commenter concludes that this data ''suggests that bench aging may not be as predictive as testing techniques which rely, at least in part, on whole vehicle testing''.

The commenter was concerned that all failing test data reported (6 of 131 tests) occurred for GM vehicles which used a bench procedure. The commenter noted that the data from Ford, Honda, and Toyota showed no emission failures. The commenter interpreted that Ford, Honda, and Toyota all used track procedures (in whole or part) and therefore track procedures were better than bench procedures.

Essentially the same comment as outlined above is provided by another commenter who references the concerns of Ethyl made in their comments to the NPRM.

EPA Response

The Agency presented the results of the in-use verification data collected under RDP–I in the TSD. The data showed that the certification standards were met for 125 of 131 tests run. The data from bench aging programs does not support the view that whole vehicle aging is better at representing in-use deterioration than bench aging of components. First, contrary to commenters statement, the Ford data was a bench procedure, not a track procedure.

The commenter focuses on the fact that several of the engine-out data points showed measurable deterioration, i.e., that not all of the data shows no engine-out deterioration. This variety in the data, however, is a normal expectation. When experimental data is collected, it is natural that the observed value will differ from the true value for the population due to test-to-test, lab-to-lab, and vehicle-to-vehicle variability. If the true population mean were zero (for example: the hypothesis that engine-out deterioration is zero), then due to this variability one would expect half the measurements to be positive (actual measured data indicates some positive deterioration), while the other half would be negative. The data present by Chrysler and GM show a better than expected distribution of measurements which support the hypothesis that the true mean of engine-out emissions deterioration is zero.

The commenter indicated that Toyota provided data indicating that their engines showed significant engine out emission deterioration based on their reading of Table 1 of the TSD. This observation is incorrect. In fact, the table reports that Toyota *did not supply* data indicating that their engines experienced essentially no engine-out deterioration. The table entry does not mean that Toyota supplied data

indicating that their engines experienced significant engine-out emission deterioration. In its discussions with the Agency, Toyota presented the opinion that Toyota engines did not have significant engine-out deterioration. The table indicates only that there was no submission of supporting data.

The commenter was concerned that most of the Chrysler data is on Tier 0 vehicles and was concerned that Tier 1 vehicles may perform differently. The data presented by Chrysler on Tier 1 vehicles showed that engine-out emissions increased over 100,000 miles by −2.6% for HC, 0.8% for CO, and −8.6% for NO_X. Although a smaller data set, Chrysler's Tier 1 data also show essentially no engine-out deterioration and for CO a much smaller rate of deterioration (0.8% versus 4.7%) with Tier 1 technology.

EPA disagrees with commenters claim that ''significant deterioration in engine-out emissions can (and, in fact, does) occur over time.'' See comment at 12. The Chrysler data shows the that the average engine-out emission deterioration was −4.3% for HC, 4.7% for CO, and −11.9% for NO_X; 62 of 102 deterioration measurements were zero or negative. The GM engine-out data was provided on nine vehicles; 24 of 27 emission deterioration measurements showed little or no emissions increase.

Second, the data for Honda and Toyota was largely at the low mileage point; only one class was run at the second mileage point and none at the high mileage point. Because emission levels typically increase with mileage it is not unexpected that there were more failures detected on the GM program which included high mileage tests. In any case the degree of in-use failures is extremely small (4.5%) and does not rise to a level that raises concerns about the representativeness of any type of durability cycle. In fact the low levels of failures from GM and other in-use data substantiates the validity of the RDP–I programs to accurately represent in-use emission deterioration for a vast majority of the vehicles.

Under both the proposed and finalized rule manufacturers are required to make a demonstration that their durability process will ''effectively predict emission compliance for candidate in-use vehicles.''[8] The main concern of the Agency is that a manufacturer's durability program will, as a whole, effectively predict in-use emission levels for the significant majority of vehicles. It is important that the durability procedure predict deterioration of the entire vehicle emission control system, not any one individual element of design. To achieve this, the manufacturer may design a durability program which ages catalysts and oxygen sensors sufficiently to account for deterioration from *all* sources (including any expected deterioration from engine-out emissions). Consequently, a properly designed bench aging program could still be used to predict in-use emissions even when there would be a significant amount of engine-out deterioration.

The Agency is adopting several significant safeguards to assure that the durability process will effectively predict in-use compliance.

First, the Agency will review and approve each durability process. The Agency is requiring, under 40 CFR 86.1823–01 ''analysis and/or data demonstrating the adequacy of the manufacturer's durability processes to effectively predict emission compliance for candidate in-use vehicles.'' During this review the Agency will evaluate the likelihood that the durability process will reflect in-use deterioration of a significant majority of candidate in-use vehicles which cover the breadth of the manufacturer's product line to be covered by the durability process.

Second, and most important, the Agency has required manufacturers to collect in-use verification data for each test group. There are several in-use test groups within a durability group: the Agency predicts there will be 2 to 4 test groups per durability group. The in-use data will identify potential problems which will allow more focused Agency recall investigations. It will also allow manufacturers to improve the predictive capability of their durability process.

Lastly, when the in-use verification data exceeds a threshold, the manufacturer must re-evaluate and/or improve their durability process. The Agency also may question the representativeness of a durability process which does not exceed these threshold values. Individual test group data may be pooled into a single durability group analysis to increase the statistical confidence of the conclusions of the analysis. It is expected that manufacturers will use the results of the in-use verification data to continually improve the predictive capability of their durability process.

III. Projected Impacts

A. Environmental Impacts

EPA anticipates that the new requirements should result in some unquantifiable environmental benefits because of improvements to durability demonstration requirements, and because of the potential to identify and improve upon vehicle emission performance based on the in-use verification test results.

B. Economic Impacts

The Agency estimates that manufacturers should realize a total annual savings of about $55 million as a direct result of today's proposal. These figures include savings gained from streamlined certification activities, such as fewer durability and emission data demonstrations and reduced reporting burden, and accounts for the new costs incurred by the proposed in-use verification testing requirements. A detailed discussion and table of costs/savings are contained in the Support Document to this proposed regulation and are filed in the Docket.

IV. Public Participation

The Agency held a Public Hearing for the proposed rule on August 10, 1998, where 4 people presented oral testimony. The public comment period for the proposed rule expired on September 8, but was extended through September 24 to provide additional time to submit written comments. A total of 21 comments were received. EPA's analysis and responses to those comments are contained in a separate Response to Comments document located in the Docket.

V. Administrative Requirements

A. Executive Order 12866

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

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

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

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

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

[8] Text from 40 CFR 86.1823–01(b)(1).

It has been determined that this rule is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612 generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because it relates to requirements applicable only to manufacturers of motor vehicles, a group which does not contain a substantial number of small entities. See 1996 World Motor Vehicle Data, AAMA, pp. 282–285.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval, federal requirements and activities that result in the collection of information from ten or more persons. Information collection requirements may include reporting, labeling, and recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that do not display a currently valid OMB control number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1872.01 & 0783.38) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW, Washington DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

The information collection burden associated with this rule (testing, record keeping and reporting requirements for both certification and fuel economy activities) is estimated to total 446,783 hours annually for the manufacturers of light-duty vehicles and light-duty trucks. The hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of test groups and durability groups, production changes, emissions defects, and so forth.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR numbers issued by OMB for various regulations to list the information requirements contained in this rule.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

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

E. Congressional Review Act

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

F. National Technology Transfer and Advancement Act

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

This final rule does not involve consideration of any new technical standards. However, this final rule adopts without change certain technical standards which are voluntary consensus standards, including six Society of Automotive Engineers (SAE) procedures, one International Standards Organization (ISO) procedure, and one American Society for Testing and Materials (ASTM) procedure.

G. Protection of Children

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

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe environmental health or safety risks addressed by this action present a disproportionate risk to children because no new emission standards are being promulgated.

H. Enhancing the Intergovernmental Partnership

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

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Consultation and Coordination With Indian Tribal Governments

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VI. Statutory Authority

Sections 203, 206, 207, 208 and 217 of the Clean Air Act provide EPA with the authority to revise the current emissions compliance procedures as described in this proposal. EPA's authority to make the major revisions found in CAP 2000 is based largely on sections 206 and 208(a) of the Act. Section 206 provides EPA with the authority to test, or require to be tested in such manner as the Agency deems appropriate, any new motor vehicle to determine whether the vehicle conforms with applicable emissions standards. EPA accordingly has the broad authority to streamline the current certification process to improve the efficiency of the process. Section 208(a) further requires manufacturers to establish and maintain records, to conduct tests, and to submit information that EPA may reasonably require to determine whether a manufacturer is in compliance with Title II of the Act and it implementing regulations, or to otherwise carry out the provisions of Title II. This includes information needed by EPA to make certification decisions, to determine whether vehicles built and sold are covered by the certificate, and to ensure that defeat devices are not used. Section 208(a) also provides EPA with the authority to require post-production testing of vehicles by manufacturers to provide a means of monitoring the emissions performance of vehicles driven under real-world conditions. Such testing serves as a check on the accuracy of the certification procedures and on the levels of in-use compliance with applicable emissions standards.

This rule does not require any manufacturer to change its certification practices prior to model year 2000. However, manufacturers have the option to implement the streamlined certification procedures adopted today as soon as the rule is effective. Such early use of these procedures could benefit a manufacturer, and would also provide the environmental benefits expected from this program. EPA therefore finds that there is good cause under 5 U.S.C. 553(d) to make this rule effective upon publication.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Parts 86 and 88

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Environmental protection, Administrative practice and procedure, Fuel economy, Labeling, Reporting and recordkeeping requirements.

Dated: March 15, 1999.

Carol M. Browner,

Administrator.

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

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended under the indicated heading by adding new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.1843–01	2060–0104
86.1844–01	2060–0104
86.1847–01	2060–0104
* * * * *	

PART 85—[AMENDED]

3. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547 and 7601(a).

4. Section 85.501 is revised to read as follows:

§ 85.501 General applicability.

(a) Sections 85.501 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

5. Section 85.1501 is amended by adding a new paragraph (c) to read as follows:

§ 85.1501 Applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

6. Section 85.1505 is amended by revising paragraphs (a)(3)(i)(B), (a)(3)(ii)(B) and (a)(3)(iii) to read as follows:

§ 85.1505 Final admission of certified vehicles.

(a) * * *

(3) * * *

(i) * * *

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01, as applicable, that causes the vehicle to meet Federal emission requirements.

(ii) * * *

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01, as applicable, that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01 as applicable, that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

* * * * *

7. Section 85.1510 is amended by revising paragraph (a)(3) to read as follows:

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

* * * * *

(a) * * *

(3) Such instructions shall not contain requirements more restrictive than those set forth in 40 CFR part 86, subpart A or subpart S, as applicable (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

* * * * *

8. Section 85.1512 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) * * *

(1) * * *

(iii) Is labeled in accordance with 40 CFR part 86, subpart A or subpart S, or, where applicable, § 85.1510(c); and

* * * * *

9. Section 85.1701 is amended by adding a new paragraph (c) to read as follows:

§ 85.1701 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

10. Section 85.1902 is amended by revising paragraph (b) to read as follows:

§ 85.1902 Definitions.

* * * * *

(b) The phrase emission-related defect shall mean a defect in design, materials, or workmanship in a device, system, or assembly described in the approved Application for Certification (required by 40 CFR 86.1843–01 and 86.1844–01, 40 CFR 86.098–22 and like provisions of subpart A of this part and 40 CFR part 86) which affects any parameter or specification enumerated in Appendix VIII of this part.

* * * * *

11. Section 85.2101 is revised to read as follows:

§ 85.2101 General applicability.

(a) Sections 85.2101 through 85.2111 are applicable to all 1981 and later model year light-duty vehicles and light-duty trucks.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

12. Section 85.2102 is amended by revising paragraph (a)(13)(ii) to read as follows:

§ 85.2102 Definitions.

(a) * * *

(13) * * *

(ii) In compliance with the requirements of 40 CFR 86.094–38 or 86.1808–01 (as appropriate for the applicable model year vehicle/engine classification); and

* * * * *

13. Section 85.2208 is amended by revising paragraph (a)(1) to read as follows:

§ 85.2208 Alternative standards and procedures.

(a)(1) As a part of the certification process, as set forth in 40 CFR part 86, subparts A and S, a manufacturer may request an alternative short test standard or short test procedure for any vehicle or engine for which the standards or procedures specified in this subpart are not appropriate. The requestor shall supply relevant test data and technical support to substantiate the claim and shall also recommend alternative test procedures and/or standards for the Administrator's consideration. Upon an acceptable showing that the general standards or procedures are not appropriate, the Administrator shall set alternative standards or procedures through rulemaking. The administrative provisions of the certification process (see 40 CFR part 86, subparts A and S), apply to such a request for alternative standards or procedures.

* * * * *

PART 86—[AMENDED]

14. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

15. Section 86.1 is amended by revising the entry for ASTM E29–93a in the table in paragraph (b)(1); the entries for SAE J1850, SAE J1877, SAE J1892, SAE J1962, SAE J1979, and SAE J2012 in the table in paragraph (b)(2); the entry for ANSI/AGA NGVI–1994 in the table in paragraph (b)(3); and the entry for ISO 9141–2 in the table in paragraph (b)(5) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 86 reference
* * *	* *
ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	86.098–15, 86.004–15, 86.1803–01, 86.1823–01, 86.1824–01, 86.1825–01, 86.1837–01

(2) * * *

Document No. and name	40 CFR part 86 reference
* * *	* *
SAE J1850 July 1995, Class B Data Communication Network Interface.	86.099–17, 86.1806–01
SAE J1877, July 1994 Recommended Practice for Bar-Coded Vehicle Identification Number Label.	86.095–35, 86.1806–01
SAE J1892 October 1993, Recommended Practice for Bar-Coded Vehicle Emission Configuration Label.	86.095–35, 86.1806–01
SAE J1962 January 1995, Diagnostic Connector.	86.099–17, 86.1806–01
SAE J1979 July 1996, E/E Diagnostic Test Modes.	86.099–17, 86.1806–01
SAE J2012 July 1996, Recommended Practice for Diagnostic Trouble Code Definitions.	86.099–17, 86.1806–01

* * * * *

(3) * * *

Document No. and name	40 CFR part 86 reference
ANSI/AGA NGV1–1994, Standard for Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices.	86.001–9, 86.004–9, 86.098–8, 86.099–8, 86.099–9, 86.1810–01

* * * * *

(5) * * *

Document No. and name	40 CFR part 86 reference
ISO 9141–2 February 1994, Road vehicles—Diagnostic systems Part 2.	86.099–17, 86.1806–01

Subpart A—[Amended]

16. A new § 86.001–1 is added to subpart A to read as follows:

§ 86.001–1 General applicability.

(a) The provisions of this subpart generally apply to 2001 and later model year new Otto-cycle and diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles and 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks produced. Provisions generally applicable to all 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles and 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks are located in Subpart S of this part.

(b) Optional applicability. A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in Subpart S of this Part. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

(c) [Reserved]

(d) [Reserved]

(e) Small volume manufacturers. Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of §§ 85.1505 and 85.1509 of this chapter) are fewer than 10,000 units for the model year in which the manufacturer seeks certification. To certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. The manufacturer must meet the eligibility criteria specified in § 86.092–14(b) before the Administrator's approval will be granted. The small-volume manufacturer's certification procedures are described in § 86.092–14.

(f) Optional procedures for determining exhaust opacity. (1) The provisions of subpart I of this part apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than those described in subpart I of this part, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.091–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in subpart I of this part. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements for subpart I of this part.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with data obtained in accordance with the

procedures described in subpart I of this part, EPA may require that all certificates of conformity not already issued be based on data obtained from procedures described in subpart I of this part.

Subpart B—[Amended]

17. Section 86.101 of subpart B is amended by adding a new paragraph (d) to read as follows:

§ 86.101 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

18. Section 86.106–96 is amended by revising paragraph (a)(1) to read as follows:

§ 86.106–96 Equipment required; overview.

(a) * * *

(1) *Evaporative emission tests, gasoline-fueled vehicles.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must undergo testing according to the test sequences described in § 86.130–96; however, the Administrator may omit measurement of exhaust emissions to test for evaporative emissions. The Administrator may truncate a test after any valid emission measurement without affecting the validity of the test. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26 or § 86.1810, as applicable, all vehicles must undergo both tests. (Petroleum-fueled diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

* * * * *

19. Section 86.113–94 is amended by revising paragraphs (a)(3), (b)(5), (c)(3), (d)(1), (d)(3), (e)(4), and (f)(3) to read as follows:

§ 86.113–94 Fuel specifications.

(a) * * *

(3) The specification range of the gasoline to be used under this paragraph (a) shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(b) * * *

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3) and (b)(4) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(c) * * *

(3) The specification range of the fuels to be used under paragraphs (c)(1) and (c)(2) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(d) * * *

(1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall consist of the appropriate petroleum fuels listed in either paragraph (a) or paragraph (b) of this section and a methanol fuel representative of the fuel expected to be found in use, as specified in paragraph (c) of this section, and shall be within the range of fuel mixtures for which the vehicle was designed, as reported in § 86.94–21(j) or § 86.1844–01 as applicable. The Administrator may use any fuel or fuel mixture within this range for testing.

* * * * *

(3) The specification range of the fuels to be used under this paragraph shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(e) * * *

(4) The specification range of the fuels to be used under paragraphs (e)(1), (e)(2) and (e)(3) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(f) * * *

(3) The specification range of the fuel to be used under paragraphs (f)(1) and (f)(2) of this section shall be measured in accordance with ASTM D2163–61 (Incorporated by reference; see § 86.1) and reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

* * * * *

20. Section 86.127–00 is amended by revising the introductory text and paragraph (h) to read as follow:

§ 86.127–00 Test procedures; overview.

Applicability. The procedures described in this and subsequent sections are used to determine the conformity of vehicles with the standards set forth in subpart A or S of this part (as applicable) for light-duty vehicles and light-duty trucks. Except where noted, the procedures of paragraphs (a) through (b) of this section, § 86.127–96 (c) and (d), and the contents of §§ 86.135–94, 86.136–90, 86.137–96, 86.140–94, 86.142–90, and 86.144–94 are applicable for determining emission results for vehicle exhaust emission systems designed to comply with the FTP emission standards, or the FTP emission element required for determining compliance with composite SFTP standards. Paragraphs (f) and (g) of this section discuss the additional test elements of aggressive driving (US06) and air conditioning (SC03) that comprise the exhaust emission components of the SFTP. Section 86.127–96(e) discusses fuel spitback emissions and paragraphs (h) and (i) of this section are applicable to all vehicle emission test procedures. Section 86.127–00 includes text that specifies requirements that differ from § 86.127–96. Where a paragraph in § 86.127–96 is identical and applicable to § 86.127–00, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.127-96.''

* * * * *

(h) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.098–25 or § 86.1834–01 as applicable.

* * * * *

21. Section 86.128–79 is amended by revising paragraph (g)(2) to read as follows:

§ 86.128–79 Transmissions.

* * * * *

(g) * * *

(2) A manufacturer may recommend to the ultimate purchaser shift procedures other than those used in testing by the EPA, Provided that: All shift procedures (including multiple shift speeds) which the manufacturer proposes to supply to the ultimate purchaser are provided to the Administrator as part of the manufacturer's application for certification, or as an amendment to such application, under § 86.079–32, § 86.079–33, § 86.082–34, or § 86.1844–01 as applicable.

* * * * *

22. Section 86.129–00 is amended by revising footnote 4 to the table in paragraph (a) and paragraph (d)(1)(iv) to read as follows:

§ 86.129–00 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(a) * * *

* * * * *

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9, test weight basis shall be adjusted loaded vehicle weight, as

defined in § 86.094–2 or 86.1803–01 as applicable. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2 or 86.1803–01 as applicable.

* * * * *

(d) * * *

(1) * * *

(iv) Small-volume manufacturers, as defined in § 86.094–14(b)(1) or § 86.1838–01 as applicable, may use an alternate method for generating fuel temperature profiles, subject to the approval of the Administrator.

* * * * *

23. Section 86.132–96 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(e) * * *

(2) * * *

(ii) For abnormally treated vehicles, as defined in § 86.085–2 or § 86.1803–01 as applicable, two Highway Fuel Economy Driving Schedules, found in 40 CFR part 600, appendix I, run in immediate succession, with the road load power set at twice the value obtained from § 86.129–80.

* * * * *

Subpart G—[Amended]

24–25. Section 86.601–84 of subpart G is amended by adding paragraph (b) to read as follows:

§ 86.601–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of Subpart S of this part.

Subpart H—[Amended]

26. Section 86.701–94 is revised to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart J—[Amended]

27. A new § 86.902–01 is added to subpart J to read as follows:

§ 86.902–01 Definitions.

(a) The definitions in § 86.902–93 continue to apply to this subpart.

(b) The definitions in subparts A and S of this part apply to this subpart.

28. A new § 86.907–01 is added to subpart J to read as follows:

§ 86.907–01 Fee amounts.

The fee for each certification request type is:

Certificate type	Model year 2001 and later
LDV/LDT:	
Fed Signed	$27,211
Cal-only Signed	8,956
Fed Unsigned	2,738
Cal-only Unsigned	2,738
HDE/HDV:	
Fed Signed	12,584
Cal-only Signed	2,145
Fed Unsigned	2,145
Cal-only Unsigned	2,145
All Evaporative-only	2,145
Motorcycles:	
Fed Signed	840
Cal-only Signed	840
Fed Unsigned	840
Cal-only Unsigned	840

29. A new § 86.908–01 is added to subpart J to read as follows:

§ 86.908–01 Waivers and refunds.

This section includes text that specifies requirements that differ from § 86.908–93. Where a paragraph in § 86.908–93–01 is identical and applicable to this section, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.908–93.''

(a) [Reserved]. For guidance see § 86.908–93.

(b) *Request for refund.* The Administrator may refund a specified part of any fee imposed by § 86.907 if the applicant fails to obtain a signed certificate and requests a refund.

(1) That portion of the total fee to be refunded will be as follows:

[In percent]

	Federal	California-only
LDV/LDT	89.9	69.4
HDE/HDV	83.0	0
HD—Evaporative only	0	0
MC	0	0

(2) For a refund of a portion of a waiver payment due to a decrease in the projected retail sales price of the vehicles or engines to be covered by the certification request the applicant should submit documentation to EPA detailing the waiver fee adjustment.

(c) *Waiver and refund address.* A request for a waiver or refund of part of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Vehicle Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Subpart K—[Amended]

30. Section 86.1001–84 is amended by adding paragraph (b) to read as follows:

§ 86.1001–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart L—[Amended]

31. Section 86.1101–87 is revised to read as follows:

§ 86.1101–87 Applicability.

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks under the provisions of subpart S of this part.

Subpart O—[Amended]

32. Section 86.1401 is revised to read as follows:

§ 86.1401 Scope; applicability.

(a) This subpart contains CST procedures for gasoline-fueled Otto-cycle light-duty vehicles, and for gasoline-fueled Otto-cycle light-duty trucks, including those certified to operate using both gasoline and another fuel (for example, ''flexible-fuel'' or

''dual-fuel'' light-duty vehicles and light-duty trucks). For the purposes of the Certification Short Test, flexible-fuel or dual-fuel vehicles will be treated as dedicated gasoline vehicles. This subpart applies to 1996 and later mode years.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart P—[Amended]

33. Section 86.1501 is revised to read as follows:

§ 86.1501–94 Scope; applicability.

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks under the provisions of subpart S of this part.

34. Section 86.1502–84 is revised to read as follows:

§ 86.1502–84 Definitions.

The definitions in § 86.084–2 or § 86.1803–01, as applicable, apply to this subpart.

35. Section 86.1503–84 is revised to read as follows:

§ 86.1503–84 Abbreviations.

The abbreviations in § 86.084–3 or in § 86.1804–01, as applicable, apply to this subpart.

Subpart Q—[Amended]

36. Section 86.1601 is amended by adding a new paragraph (d) to read as follows:

§ 86.1601 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart R—[Amended]

37. Section 86.1701–99 is amended by adding a new paragraph (e) to read as follows:

§ 86.1701–99 General applicability.

* * * * *

(e) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

38.–39. New §§ 86.1713–01, 86.1714–01, 86.1715–01, and 86.1716–01 are added and reserved to read as follow:

§ 86.1713–01 [Reserved]

§ 86.1714–01 [Reserved]

§ 86.1715–01 [Reserved]

§ 86.1716–01 [Reserved]

40. A new § 86.1717–01 is added to subpart R to read as follows:

§ 86.1717–01 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

(a) The provisions of § 86.1806–01 and subsequent model year provisions do not apply to this subpart.

(b) The requirements in Chapter 6 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) (these requirements are incorporated by reference; see § 86.1) apply to this subpart.

(c) No vehicle shall be certified under the provisions of this subpart unless such vehicle complies with the requirements of section 202(m) (1), (2), (4), and (5) of the Clean Air Act (42 U.S.C. 7521(m) (1), (2), (4) and (5)).

41. A new § 86.1721–01 is added to subpart R to read as follows:

§ 86.1721–01 Application for certification.

The provisions of § 86.1844–01 and subsequent model year provisions apply to this subpart, with the following additions to the part 1 and part 2 applications:

(a) For TLEVs, LEVs, and ULEVs not certified exclusively on gasoline, projected U.S. sales data and fuel economy data 19 months prior to January 1 of the calendar year with the same numerical designation as the model year for which the vehicles are certified, and projected U.S. sales data for all vehicles, regardless of operating fuel or vehicle emission category, sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested at the time of certification.

(b) For ZEVs and hybrid electric vehicles, the certification part 1 application shall include the following:

(1) Identification and description of the vehicle(s) covered by the application.

(2) Identification of the vehicle weight category to which the vehicle is certifying: LDV, LDT 0–3750 lbs LVW, LDT 3751–5750 lbs LVW (state test weight range), and the curb weight and gross vehicle weight rating of the vehicle.

(3) Identification and description of the propulsion system for the vehicle.

(4) Identification and description of the climate control system used on the vehicle.

(5) Projected number of vehicles sold in the U.S., and projected U.S. sales.

(6) For electric and hybrid electric vehicles, identification of the energy usage in kilowatt-hours per mile from the point when electricity is introduced from the electrical outlet and the operating range in miles of the vehicle when tested in accordance with the All-Electric Range Test provisions in § 86.1770.

(7) If the vehicle is equipped with a fuel fired heater, a description of the control system logic of the fuel fired heater, including an evaluation of the conditions under which the fuel fired heater can be operated and an evaluation of the possible operational modes and conditions under which evaporative emissions can exist. Vehicles which utilize fuel fired heaters which can be operated at ambient temperatures above 40 deg. F or which cannot be demonstrated to have zero evaporative emissions under any and all possible operation modes and conditions shall not be certified as ZEVs.

(8) For ZEVs and HEVs which use fuel fired heaters, the manufacturer shall provide the exhaust emissions value per mile produced by the auxiliary fuel fired heater. This shall be accomplished by determining heater emissions in grams per minute when operating at a maximum heating capacity for a period of 20 minutes, and multiplying that number by 3.6 minutes per mile. At the time of certification, manufacturers shall submit their test plan which describes the procedure used to determine the mass emissions of the fuel fired heater.

(9) All information necessary for proper and safe operation of the vehicle, including information on the safe handling of the battery system, emergency procedures to follow in the event of battery leakage or other

malfunctions that may affect the safety of the vehicle operator or laboratory personnel, method for determining battery state-of-charge, battery charging capacity and recharging procedures, and any other relevant information as determined by the Administrator.

(c) For all vehicles subject to the provisions of § 86.1717, with its part 1 application for certification a description of the malfunction and diagnostic system to be installed on the vehicles. (The vehicles shall not be certified unless the Administrator finds that the malfunction and diagnostic system complies with the requirements of § 86.1717.).

(d) The comprehensive list of test results and the applicable certification levels required under § 86.1844–01(d)(7) shall include the following information:

(1) For all TLEVs, LEVs, and ULEVs certifying on a fuel other than conventional gasoline, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. For all TLEVs, LEVs, and ULEVs certifying on natural gas, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part and add that value to the product of the methane exhaust certification level for each emission-data vehicle and the appropriate methane reactivity adjustment factor listed in § 86.1777(d)(2)(ii) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. Manufacturers requesting to certify to existing standards utilizing an adjustment factor unique to its vehicle/fuel system must follow the data requirements described in Appendix XVII of this part. A separate formaldehyde exhaust certification level shall also be provided for demonstrating compliance with emission standards for formaldehyde.

(2) [Reserved]

(e) Manufacturers shall submit the standard phase-in compliance information required in § 86.1844–01 (d)(13) and (e)(4) with respect to the applicable standards of the subpart.

(f) For each engine family certified to TLEV, LEV, or ULEV standards, manufacturers shall submit with the certification application, an engineering evaluation demonstrating that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 deg F. For diesel vehicles, the engineering evaluation shall also include particulate emissions.

42. New §§ 86.1722–01 and 86.1723–01 are added and reserved to read as follow:

§ 86.1722–01 [Reserved]

§ 86.1723–01 [Reserved]

43. A new § 86.1724–01 is added to subpart R to read as follows:

§ 86.1724–01 Emission data vehicle selection.

(a) [Reserved]

(b) The provisions of § 86.1828–01 and subsequent model year provisions apply to this subpart with the following additions:

(1) For TLEVs, LEVs, ULEVs, and ZEVs certifying according to the provisions of this subpart, a manufacturer may substitute emission data vehicles selected by the California Air Resources Board criteria instead of using the criteria specified in §§ 86.1828–01(a) through (d) and subsequent model year provisions.

(2) For vehicles certified to the SFTP exhaust emission standards, if air conditioning is projected to be available on any vehicles within the engine family, the selection of engine codes will be limited selections which have air conditioning available and would require that any vehicle selected under this section has air conditioning installed and operational.

44. A new § 86.1725–01 is added to read as follows:

§ 86.1725–01 Allowable maintenance.

This section includes text that specifies requirements that differ from § 86.1725–99. Where a paragraph in § 86.1725–99 is identical and applicable to this section, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1725–99.'' The provisions of § 86.1834–01 and subsequent model year provisions apply to this subpart, with the following additions:

(a) Hybrid electric vehicles that use Otto-cycle or diesel engines are subject to the applicable Otto-cycle or diesel engine maintenance requirements of § 86.1834–01(b) through (e) and subsequent model year provisions.

(b) through (c) [Reserved]. For guidance see § 86.1725–99.

(d) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and in a representative condition. Required air conditioning system maintenance is performed as unscheduled maintenance that does not require the Administrator's approval.

45. Section 86.1726–01 is added and reserved to read as follows:

§ 86.1726–01 [Reserved]

46. A new § 86.1728–01 is added to subpart R to read as follows:

§ 86.1728–01 Compliance with emission standards for the purpose of certification.

The provisions of § 86.1837–01 and subsequent model year provisions apply with respect to the applicable standards of this subpart.

47. A new § 86.1734–01 is added and reserved to read as follows:

§ 86.1734–01 [Reserved]

48. A new § 86.1735–01 is added to subpart R to read as follows:

§ 86.1735–01 Labeling.

The following requirements shall apply to TLEVs, LEVs, ULEVs, and ZEVs certified under the provisions of this subpart:

(a) The requirements in § 86.1807–01 and subsequent model year provisions do not apply to this section.

(b) The requirements in Chapter 7 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) shall apply. These requirements are incorporated by reference (see § 86.1).

49. Section 86.1772–99 is amended by revising paragraph (b)(1) to read as follows:

§ 86.1772–99 Road load power, test weight, and inertia weight class determination.

* * * * *

(b) * * *

(1) For electric and hybrid electric vehicle lines where it is expected that more than 33 percent of a vehicle line will be equipped with air conditioning, per § 86.096–24(g)(2) or § 86.1832–01(a) as applicable, that derives power from the battery pack, the road load shall be increased by the incremental horsepower required to operate the air conditioning unit. The incremental increase shall be determined by recording the difference in energy required for a hybrid electric vehicle under all-electric power to complete the

running loss test fuel tank temperature profile test sequence without air conditioning and the same vehicle tested over the running loss test fuel tank temperature profile test sequence with the air conditioning set to the ''NORMAL'' air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed over the time period needed to perform the test sequence, and converting this value into units of horsepower. Vehicles equipped with automatic temperature controlled air conditioning systems shall be operated in ''AUTOMATIC'' temperature and fan modes with the system set at 72 deg. F. The running loss test fuel tank temperature profile test sequence is found in § 86.129(d).

* * * * *

50. Section 86.1776–99 is amended by revising paragraph (b)(1) to read as follows:

§ 86.1776–99 Records required.

* * * * *

(b) * * *

(1) The manufacturer shall record in the durability-data vehicle logbook, the number of regenerations that occur during the 50,000 mile durability test of each diesel light-duty vehicle and light-duty truck equipped with a periodically regenerating trap oxidizer system. The manufacturer shall include, for each regeneration: the date and time of the start of regeneration, the duration of the regeneration, and the accumulated mileage at the start and the end of regeneration. The number of regenerations will be used in the calculation of the deterioration factor or other durability demonstration under § 86.1823–01 and subsequent model year provisions.

* * * * *

51. A new subpart S is added to part 86 to read as follows:

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles and Light-Duty Trucks

Sec.

86.1801–01 Applicability.
86.1802–01 Section numbering; construction.
86.1803–01 Definitions.
86.1804–01 Acronyms and abbreviations.
86.1805–01 Useful life.
86.1806–01 On-board diagnostics.
86.1807–01 Vehicle labeling.
86.1808–01 Maintenance instructions.
86.1809–01 Prohibition of defeat devices.
86.1810–01 General standards; increase in emissions; unsafe conditions; waivers
86.1811–01 Emission standards for light-duty vehicles.
86.1812–01 Emission standards for light-duty trucks 1.
86.1813–01 Emission standards for light-duty trucks 2.
86.1814–01 Emission standards for light-duty trucks 3.
86.1814–02 Emission standards for light-duty trucks 3.
86.1814–04 Emission standards for light-duty trucks 3.
86.1815–01 Emission standards for light-duty trucks 4.
86.1815–02 Emission standards for light-duty trucks 4.
86.1815–04 Emission standards for light-duty trucks 4.
86.1816 through 86.1819 [Reserved].
86.1820–01 Durability group determination.
86.1821–01 Evaporative/refueling family determination.
86.1822–01 Durability data vehicle selection.
86.1823–01 Durability demonstration procedures for exhaust emissions.
86.1824–01 Durability demonstration procedures for evaporative emissions.
86.1825–01 Durability demonstration procedures for refueling emissions.
86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.
86.1827–01 Test group determination.
86.1828–01 Emission data vehicle selection.
86.1829–01 Durability and emission testing. requirements; waivers.
86.1830–01 Acceptance of vehicles for emission testing.
86.1831–01 Mileage accumulation requirements for test vehicles.
86.1832–01 Optional equipment and air conditioning for test vehicles.
86.1833–01 Adjustable parameters.
86.1834–01 Allowable maintenance.
86.1835–01 Confirmatory certification testing.
86.1836–01 Manufacturer-supplied production vehicles for testing.
86.1837–01 Rounding of emission measurements.
86.1838–01 Small volume manufacturers certification procedures.
86.1839–01 Carryover of certification data.
86.1840–01 Special test procedures.
86.1841–01 Compliance with emission standards for the purpose of certification.
86.1842–01 Addition of a vehicle after certification; and changes to a vehicle covered by certification.
86.1843–01 General information requirements.
86.1844–01 Information requirements: Application for certification and submittal of information upon request.
86.1845–01 Manufacturer in-use verification testing requirements.
86.1845–04 Manufacturer in-use verification testing requirements.
86.1846–01 Manufacturer in-use confirmatory testing requirements.
86.1847–01 Manufacturer in-use verification and in-use confirmatory testing; submittal of information and maintenance of records.
86.1848–01 Certification.
86.1849–01 Right of entry.
86.1850–01 Denial, suspension or revocation of certificate of conformity.
86.1851–01 Application of good engineering judgment to manufacturers' decisions.
86.1852–01 Waivers for good in-use emission performance.
86.1853–01 Certification hearings.
Appendix I to Subpart S of Part 86—Vehicle Procurement Methodology
Appendix II to Subpart S of Part 86—As-received Testing Vehicle Rejection Criteria
Appendix III to Subpart S of Part 86—As-received Inspection

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles and Light-Duty Trucks

§ 86.1801–01 Applicability.

(a) The provisions of this subpart apply to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles and 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks. These provisions also apply to 2001 model year and later new incomplete light-duty trucks. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph of this subpart.

(b) The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles and light-duty trucks as defined in 40 CFR 85.502.

(c) Optional applicability.

(1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(2) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A of this part beginning with the 2000 model year. Manufacturers choosing this option must comply with all provisions of this subpart, except the standards in subpart A of this part apply for model year 2000. Manufacturers may elect this provision for either all or a portion of their product line.

(d) Small volume manufacturers. Special certification procedures are available for any manufacturer whose projected or actual combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509) are fewer than 15,000 units for

the model year in which the manufacturer seeks certification. The small volume manufacturer's light-duty vehicle and light-duty truck certification procedures are described in § 86.1838–01.

(e) National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks. A manufacturer may elect to certify light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those covered manufacturers as defined under the provisions of subpart R of this part. All provisions of this subpart S are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

§ 86.1802–01 Section numbering; construction.

(a) Section numbering. The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted. Example: Section 86.18xx–01 applies to the 2001 and subsequent model years. If a § 86.18xx–03 is promulgated it would apply beginning with the 2003 model year; § 86.18xx–01 would apply to model years 2001 through 2002.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

§ 86.1803–01 Definitions.

The following definitions apply to this subpart:

505 Cycle means the test cycle that consists of the first 505 seconds (seconds 1 to 505) of the EPA Urban Dynamometer Driving Schedule, described in § 86.115–00 and listed in Appendix I, paragraph (a), of this part.

866 Cycle means the test cycle that consists of the last 866 seconds (seconds 506 to 1372) of the EPA Urban Dynamometer Driving Schedule, described in § 86.115–00 and listed in Appendix I, paragraph (a), of this part.

Abnormally treated vehicle means any diesel light-duty vehicle or diesel light-duty truck that is operated for less than five miles in a 30 day period immediately prior to conducting a particulate emissions test.

AC1 means a test procedure as described in § 86.162–00 which simulates testing with air conditioning operating in an environmental test cell by adding the air conditioning compressor load to the normal dynamometer forces.

AC2 means a test procedure as described in § 86.162–00 which simulates testing with air conditioning operating in an environmental test cell by adding a heat load to the passenger compartment.

Accuracy means the difference between a measurement and true value.

Act means Part A of Title II of the Clean Air Act as amended, 42 U.S.C., 7401, et seq.

Adjusted Loaded Vehicle Weight means the numerical average of vehicle curb weight and gross vehicle weight rating (GVWR).

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Alternative fuels means any fuel other than gasoline and diesel fuels, such as methanol, ethanol, and gaseous fuels.

Approach angle means the smallest angle in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.

As-received condition means the condition of an in-use vehicle procured for emission testing required by this subpart upon which no adjustments, maintenance, or component replacement has occurred subsequent to the vehicle's last routine operation by the vehicle's owner, lessee, or operator prior to procurement.

Auxiliary Emission Control Device (AECD) means any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

Axle clearance means the vertical distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

Basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator.

Basic vehicle frontal area means the area enclosed by the geometric projection of the basic vehicle along the longitudinal axis, which includes tires but excludes mirrors and air deflectors, onto a plane perpendicular to the longitudinal axis of the vehicle.

Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

Body style means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback).

Body type means a name denoting a group of vehicles that are either in the same car line or in different car lines provided the only reason the vehicles qualify to be considered in different car lines is that they are produced by a separate division of a single manufacturer.

Breakover angle means the supplement of the largest angle, in the plan side view of an automobile, that can be formed by two lines tangent to the front and rear static loaded radii arcs and intersecting at a point on the underside of the automobile.

Calibration means the set of specifications, including tolerances, unique to a particular design, version, or application of a component or components assembly capable of functionally describing its operation over its working range.

Calibration gas means a gas of known concentration which is used to establish the response curve of an analyzer.

Candidate in-use vehicle means an in-use vehicle which would be eligible to participate in the in-use verification program in accordance with § 86.1845–01.

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

Certification Short Test (CST) means the test, for gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks, performed in accordance with the procedures contained in 40 CFR part 86, subpart O.

Configuration means a subclassification within a test group which is based on engine code, inertia weight class, transmission type and gear

ratios, final drive ratio, and other parameters which may be designated by the Administrator.

Conveniently available service facility and spare parts for small-volume manufacturers means that the vehicle manufacturer has a qualified service facility at or near the authorized point of sale or delivery of its vehicles and maintains an inventory of all emission-related spare parts or has made arrangements for the part manufacturers to supply the parts by expedited shipment (e.g., utilizing overnight express delivery service, UPS, etc.).

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

Critical emission-related components are those components which are designed primarily for emission control, or whose failure may result in a significant increase in emissions accompanied by no significant impairment (or perhaps even an improvement) in performance, driveability, and/or fuel economy as determined by the Administrator.

Critical emission-related maintenance means that maintenance to be performed on critical emission-related components.

Curb weight means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with § 86.1832–01; incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

Curb-idle means, for manual transmission code light-duty vehicles and trucks, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code light-duty vehicles and light-duty trucks, curb-idle means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or two communication wires. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration related information.

Dedicated vehicle means any motor vehicle engineered and designed to be operated using a single fuel. Flexible fuel vehicles and multi-fuel vehicles are not dedicated vehicles.

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the Federal emission test procedure;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

Departure angle means the smallest angle, in a plan side view of a motor vehicle, formed by the level surface on which the motor vehicle is standing and a line tangent to the rear tire static loaded radius arc and touching the underside of the motor vehicle rearward of the rear tire.

Diesel means a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle during normal operation is indicative of a diesel engine.

Dispensed fuel temperature means the temperature (deg. F or deg. C may be used) of the fuel being dispensed into the tank of the test vehicle during a refueling test.

Diurnal breathing losses means diurnal emissions.

Diurnal emissions means evaporative emissions resulting from the daily cycling of ambient temperatures.

Drive train configuration means a unique combination of engine code, transmission configuration, and axle ratio.

Dual Fuel Vehicle means any motor vehicle engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

Durability Data Vehicle means a vehicle used to generate durability data as required in this subpart.

Durability group means the basic classification unit of a manufacturer's product line used for the purpose of selecting a vehicle configuration to demonstrate durability and predict deterioration in accordance with § 86.1822–01.

Durability useful life means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck alternative useful life periods approved by the Administrator under § 86.1805–01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829–01.

Element of design means any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/ or hardware items on a motor vehicle or motor vehicle engine.

Emission control system is a unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by the Administrator used to control exhaust emissions of a vehicle.

Emission-related component means any component which can affect emissions.

Emission-related maintenance means that maintenance which does substantially affect emissions or which is likely to affect the emissions deterioration of the vehicle during normal in-use operation, even if the maintenance is performed at some time other than that which is recommended.

Engine code means a unique combination within a test group of displacement, fuel injection (or carburetor) calibration, choke calibration, distributor calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator.

Engine warm-up cycle means sufficient vehicle operation such that the coolant temperature has risen by at least 40 deg. F from engine starting and reaches a minimum temperature of 160 deg. F.

Environmental test cell means a test cell capable of wind-speed, solar thermal load, ambient temperature, and humidity control or simulation which meets the requirements of § 86.161–00 for running emission tests with the air conditioning operating.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so

designated in writing by the Administrator (or by his/her designee).

Equivalent test weight means the weight, within an inertia weight class, which is used in the dynamometer testing of a vehicle and which is based on its loaded vehicle weight or adjusted loaded vehicle weight in accordance with the provisions of this Part.

Evaporative emissions means hydrocarbons emitted into the atmosphere from a motor vehicle, other than exhaust and crankcase emissions.

Evaporative/refueling control system means a unique combination within an evaporative/refueling family of canister adsorptive material, purge system configuration, purge strategy, and other parameters determined by the Administrator to affect evaporative and refueling emission control system durability or deterioration factors.

Evaporative/refueling emission code means a unique combination, in an evaporative/refueling family-evaporative emission control system combination, of purge system calibrations, fuel tank and carburetor bowl vent calibrations and other fuel system and evaporative emission control system components and calibrations specified by the Administrator.

Evaporative/refueling family means the basic classification unit of a manufacturers' product line used for the purpose of evaporative and refueling emissions test fleet selection and determined in accordance with § 86.1821–01.

Evaporative/refueling vehicle configuration means a unique combination of basic engine, engine code, body type, and evaporative emission code.

Exhaust emissions means substances emitted to the atmosphere from any opening downstream from the exhaust port of a motor vehicle engine.

Exhaust Gas Recirculation Valve means a device which directs a portion of the exhaust gas into the intake air stream for the purpose of controlling emissions.

Federal Test Procedure, or FTP means the test procedure as described in § 86.130–00(a) through (d) and (f) which is designed to measure urban driving tail pipe exhaust emissions and evaporative emissions over the Urban Dynamometer Driving Schedule as described in Appendix I to this part.

Fixed liquid level gauge means a type of liquid level gauge used on liquefied petroleum gas-fueled vehicles which uses a relatively small positive shutoff valve and is designed to indicate when the liquid level in the fuel tank being filled reaches the proper fill level. The venting of fuel vapor and/or liquid fuel to the atmosphere during the refueling event is generally associated with the use of the fixed liquid level gauge.

Flexible fuel vehicle means any motor vehicle engineered and designed to be operated on a petroleum fuel, a methanol fuel, or any mixture of the two. Methanol-fueled vehicles that are only marginally functional when using gasoline (e.g., the engine has a drop in rated horsepower of more than 80 percent) are not flexible fuel vehicles.

Fuel system means the combination of fuel tank(s), fuel pump, fuel lines, and carburetor or fuel injection components, and includes all fuel system vents and fuel evaporative emission control system components.

Gaseous fuel means natural gas or liquefied petroleum gas.

Gross vehicle weight means the manufacturer's gross weight rating for the individual vehicle.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

Hang-up refers to the process of hydrocarbon molecules being adsorbed, condensed, or by any other method removed from the sample flow prior to reaching the instrument detector. It also refers to any subsequent desorption of the molecules into the sample flow when they are assumed to be absent.

Heating degree day means the number of degrees per day the daily average temperature is below 65 degrees Fahrenheit. The daily average temperature is the mean of the maximum and minimum temperature for a 24-hour period. The annual heating degree day value is derived by summing the daily heating degree days over a calendar year period.

Heavy light-duty truck means any light-duty truck rated greater than 6000 lbs GVWR. The LDT3 and LDT4 classifications comprise the heavy light-duty truck category.

Heavy-duty engine means any engine which the engine manufacturer could reasonably expect to be used for motive power in a heavy-duty vehicle.

Heavy-duty vehicle means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.

High altitude means any elevation over 1,219 meters (4,000 feet).

High-altitude conditions means a test altitude of 1,620 meters (5,315 feet), plus or minus 100 meters (328 feet), or equivalent observed barometric test conditions of 83.3 kPa (24.2 inches Hg) plus or minus 1 kPa (0.30 Hg).

Hot-soak emissions and *Hot-soak losses* means evaporative emissions after termination of engine operation.

Incomplete truck means any truck which does not have the primary load carrying device or container attached.

Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others).

Inertia weight class means the class, which is a group of equivalent test weights, into which a vehicle is grouped based on its test weight basis in accordance with the provisions of this Part 86.

Integrated refueling emission control system means a system where vapors resulting from refueling are stored in a common vapor storage unit(s) with other evaporative emissions of the vehicle and are purged through a common purge system.

Intermediary means any individual or entity, other than a manufacturer, which provides service or equipment to automotive technicians.

Intermediate temperature cold testing means testing done pursuant to the driving cycle and testing conditions contained in subpart C of this part, at temperatures between 25 deg.F (−4 deg. C) and 68 deg. F (20 deg. C).

In-use vehicle means a customer owned and operated vehicle which is not under the control of the manufacturer, dealerships or their agents. Leased vehicles will be considered in-use vehicles for the purpose of this subpart if the vehicles meet the criteria specified in § 86.1845–01.

In-use verification program (IUVP) means the testing program conducted by manufacturers which gathers in-use emission data in accordance with § 86.1848–01.

Light light-duty truck means any light-duty truck rated up through 6000 lbs GVWR. The LDT1 and LDT2 classifications compose the light light-duty truck category.

Light-duty truck means any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(3) Available with special features enabling off-street or off-highway operation and use.

Light-duty truck 1 (LDT1) means any light light-duty truck up through 3750 lbs loaded vehicle weight.

Light-duty truck 2 (LDT2) means any light light-duty truck greater than 3750 lbs loaded vehicle weight.

Light-duty truck 3 (LDT3) means any heavy light-duty truck up through 5750 lbs adjusted loaded vehicle weight.

Light-duty truck 4 (LDT4) means any heavy light-duty truck greater than 5750 lbs adjusted loaded vehicle weight.

Light-duty vehicle means a passenger car or passenger car derivative capable of seating 12 passengers or less.

Liquefied petroleum gas means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25 deg. C and pressure = 1 atm), excluding natural gas.

Loaded vehicle weight means the vehicle's curb weight plus 300 pounds.

Low altitude means any elevation equal to or less than 1,219 meters (4,000 feet).

Low altitude conditions means a test altitude less than 549 meters (1,800 feet).

Malfunction means not operating according to specifications (e.g., those specifications listed in the certification application).

Methanol-fueled vehicle means any motor vehicle or motor vehicle engine that is engineered and designed to be operated using methanol fuel (i.e., a fuel that contains at least 50 percent methanol (CH3OH) by volume) as fuel. Model means a specific combination of car line, body style, and drivetrain configuration.

Model type means a unique combination of car line, basic engine, and transmission class.

Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided that if the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

Multi-fuel means capable of operating on two or more different fuel types, either separately or simultaneously.

Natural gas means a fuel whose primary constituent is methane.

Nominal fuel tank capacity means the volume of the fuel tank(s), specified by the manufacturer to the nearest tenth of a U.S. gallon, which may be filled with fuel from the fuel tank filler inlet.

Non-emission-related maintenance means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the emissions deterioration of the vehicle or engine during normal in-use operation once the maintenance is performed.

Non-integrated refueling emission control system means a system where fuel vapors from refueling are stored in a vapor storage unit assigned solely to the function of storing refueling vapors.

Non-Methane Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated non-methane hydrocarbons, methanol, formaldehyde, or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

Non-oxygenated hydrocarbon means organic emissions measured by a flame ionization detector, excluding methanol.

N/V means the ratio of engine speed in revolutions per minute (rpm) to vehicle speed in miles per hour in the top transmission gear. At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V.

Option, in the context of a vehicle design feature, means any available equipment or feature not standard equipment on a model.

Original Equipment Manufacturer (OEM) means the manufacturer responsible for the design and production of a vehicle or component. This manufacturer will be fully knowledgeable of any production changes made to the design of the vehicle or component and shall be able to track the individual vehicles or component with regard to such production changes.

Otto-cycle means type of engine with operating characteristics significantly similar to the theoretical Otto combustion cycle. The use of a throttle during normal operation is indicative of an Otto-cycle engine.

Oxides of nitrogen means the sum of the nitric oxide and nitrogen dioxide contained in a gas sample as if the nitric oxide were in the form of nitrogen dioxide.

Petroleum fuel means liquid fuels normally derived from crude oil, excluding liquefied petroleum gas. Gasoline and diesel fuel are petroleum fuels.

Precision means the standard deviation of replicated measurements.

Proven emission control systems are emission control components or systems (and fuel metering systems) that have completed full durability testing evaluation over a vehicle's useful life in some other certified test group, or have completed bench or road testing demonstrated to be equal or more severe than certification mileage accumulation requirements. Alternatively, proven components or systems are those that are determined by EPA to be of comparable functional quality and manufactured using comparable materials and production techniques as components or systems which have been durability demonstrated in some other certified test group. In addition, the components or systems must be employed in an operating environment (e.g., temperature, exhaust flow, etc.,) similar to that experienced by the original or comparable components or systems in the original certified test group.

Recall program means the program administered by the Agency under the authority of CAA section 207, and regulations in 40 CFR part 85.

Reconfigured emission-data vehicle means an emission-data vehicle obtained by modifying a previously used emission-data vehicle to represent another emission-data vehicle.

Refueling emissions means evaporative emissions that emanate from a motor vehicle fuel tank(s) during a refueling operation.

Refueling emissions canister(s) means any vapor storage unit(s) that is exposed to the vapors generated during refueling.

Resting losses means evaporative emissions that may occur continuously, that are not diurnal emissions, hot soak emissions, refueling emissions, running losses, or spitback emissions.

Running change means a change to a vehicle or addition of a model which occurs after certification but during vehicle production.

Running losses means evaporative emissions that occur during vehicle operation.

SC03 means the test cycle, described in § 86.160–00 and listed in Appendix I, paragraph (h), of this part, which is designed to represent driving immediately following startup.

Scheduled maintenance means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed on a periodic basis to prevent part failure or vehicle (if the engine were installed in a vehicle) malfunction, or anticipated as necessary from inspection to correct an overt indication of vehicle malfunction or failure for which periodic maintenance is not appropriate.

Similar emission control systems are engine, fuel metering and emission control system combinations which use the same fuel (e.g., gasoline, diesel, etc.), combustion cycle (e.g., two or four stroke), general type of fuel system (e.g., carburetor or fuel injection), catalyst system (e.g., none, oxidization, three-way plus oxidization, three-way only, etc.), fuel control system (e.g., feedback or non-feedback), secondary air system (e.g., equipped or not equipped) and exhaust gas recirculation (EGR) (e.g., equipped or not equipped).

Span gas means a gas of known concentration which is used routinely to set the output level of an analyzer.

Special features enabling off-street or off-highway operation and use means a vehicle that has:

(1) Four-wheel drive; and

(2) At least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure; approach angle of not less than 28 degrees, breakover angle of not less than 14 degrees, departure angle of not less than 20 degrees, running clearance of not less than 8 inches, and front and rear axle clearances of not less than 7 inches each.

Spitback emissions means evaporative emissions resulting from the loss of liquid fuel that is emitted from a vehicle during a fueling operation.

Standard equipment means those features or equipment which are marketed on a vehicle over which the purchaser can exercise no choice.

Static loaded radius arc means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacturer's recommended pressure.

Supplemental FTP (SFTP) means the additional test procedures designed to measure emissions during aggressive and microtransient driving, as described in § 86.159–00 over the US06 cycle, and also the test procedure designed to measure urban driving emissions while the vehicle's air conditioning system is operating, as described in § 86.160–00 over the SC03 cycle.

Tank fuel volume means the volume of fuel in the fuel tank(s), which is determined by taking the manufacturer's nominal fuel tank(s) capacity and multiplying by 0.40. The result is rounded to the nearest tenth of a U.S. gallon in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1)

Test group means the basic classification unit within a durability group used for the purpose of demonstrating compliance with exhaust emission standards in accordance with § 86.1841–01. The test group is also used as a classification unit for gathering in-use data for the In-Use Verification Program (IUVP) in accordance with § 86.1848–01.

Test weight basis means the basis on which equivalent test weight is determined in accordance with § 86.129–00 of subpart B of this part.

Throttle means a device used to control an engine's power output by limiting the amount of air entering the combustion chamber.

Total Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated hydrocarbons, methanol, formaldehyde or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

Transmission class means the basic type of transmission, e.g., manual, automatic, semiautomatic.

Transmission configuration means a unique combination, within a transmission class, of the number of the forward gears and, if applicable, overdrive. The Administrator may further subdivide a transmission configuration (based on such criteria as gear ratios, torque convertor multiplication ratio, stall speed and shift calibration, etc.), if she/he determines that significant fuel economy or exhaust emission differences exist within that transmission configuration.

Unproven emission control systems are emission control components or systems (and fuel metering systems) that do not qualify as proven emission control systems.

Unscheduled maintenance means any adjustment, repair, removal disassembly, cleaning, or replacement of vehicle components or systems which is performed to correct a part failure or vehicle (if the engine were installed in a vehicle) malfunction which was not anticipated.

US06 means the test cycle, described in § 86.159–00 and listed in appendix I, paragraph (g), of this part, which is designed to evaluate emissions during aggressive and microtransient driving.

Useful life means the period of use or time during which an emission standard applies to light-duty vehicles and light-duty trucks, as described in § 86.1805–01.

Van means a light-duty truck having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Vehicle configuration means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio.

Zero (0) miles means that point after initial engine starting (not to exceed 100 miles of vehicle operation, or three hours of engine operation) at which normal assembly line operations and adjustments are completed, and including emission testing, if performed.

§ 86.1804–01 Acronyms and abbreviations.

The following abbreviations apply to this subpart:

A/C—Air conditioning.
AECD—Auxiliary emission control device.
ALVW—Adjusted Loaded Vehicle Weight.
API—American Petroleum Institute.
ASTM—American Society for Testing and Materials.
C—Celsius.
cfm—Cubic feet per minute.
CFV—Critical flow venturi.
CFV–CVS—Critical flow venturi—constant volume sampler.
CH3OH—Methanol.
CID—Cubic inch displacement.
Cl—Chemiluminescence.
CO—Carbon monoxide.
CO2—Carbon dioxide.
conc.—Concentration.
CST—Certification Short Test.
cu. in.—Cubic inch(es).
CVS—Constant volume sampler.
DDV—Durability Data Vehicle.
deg.—Degree(s).
DNPH—2,4-dinitrophenylhydrazine.
EDV—Emission Data Vehicle.
EP—End point.
ETW—Equivalent test weight.
F—Fahrenheit.
FID—Flame ionization detector.
ft.—Feet.
FTP—Federal Test Procedure.
g—gram(s).
gal.—U.S. gallon(s).
GC—Gas chromatograph.
GVW—Gross vehicle weight.
GVWR—Gross vehicle weight rating.
H2O—Water.
HC—Hydrocarbon(s).

HFID—Heated flame ionization detector.
Hg—Mercury.
hp—Horsepower.
HPLC—High-pressure liquid chromatography.
IBP—Initial boiling point.
in.—Inch(es).
IUVP—In-Use Verification Program.
K—Kelvin.
kg—Kilogram(s).
km—Kilometer(s).
kPa—Kilopascal(s).
lb.—Pound(s).
LDT1—Light-duty truck 1.
LDT2—Light-duty truck 2.
LDT3—Light-duty truck 3.
LDT4—Light-duty truck 4.
LPG—Liquefied Petroleum Gas.
m—Meter(s).
max.—Maximum.
mg—Milligram(s).
mi.—Mile(s).
min.—Minimum.
ml—Milliliter(s).
mm—Millimeter(s).
mph—Miles per hour.
mV—Millivolt
N2—Nitrogen.
NDIR—Nondispersive infrared.
NMHC—Nonmethane Hydrocarbons.
NMHCE—Non-Methane Hydrocarbon Equivalent.
NO—nitric oxide.
No.—Number.
O2—Oxygen.
OEM—Original equipment manufacturer.
NO2—Nitrogen dioxide.
NO_X—Oxides of nitrogen.
Pb—Lead.
pct.—Percent.
PDP–CVS—Positive displacement pump—constant volume sampler.
ppm—Parts per million by volume.
PM—Particulate Matter.
ppm C—Parts per million, carbon.
psi—Pounds per square inch.
R—Rankin.
rpm—Revolutions per minute.
RVP—Reid vapor pressure.
s—Second(s).
SAE—Society of Automotive Engineers.
SFTP—Supplemental Federal Test Procedure.
SI—International system of units.
TD—dispensed fuel temperature.
THC—Total Hydrocarbons.
THCE—Total Hydrocarbon Equivalent.
UDDS—Urban dynamometer driving schedule.
UV—Ultraviolet.
vs—Versus.
W—Watt(s).
WOT—Wide open throttle.
Wt.—Weight.

§ 86.1805–01 Useful life.

(a) Intermediate useful life is a period of use of 5 years or 50,000 miles, which ever occurs first.

(b) Full useful life is as follows:

(1) For light-duty vehicles and light light-duty trucks full useful life is a period of use of 10 years or 100,000 miles, which ever occurs first.

(2) For heavy light-duty trucks full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. Alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

§ 86.1806–01 On-board diagnostics.

(a) All light-duty vehicles and light-duty trucks shall be equipped with an on-board diagnostic (OBD) system capable of monitoring, for each vehicle's useful life, all emission-related powertrain systems or components. All systems and components required to be monitored by these regulations shall be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in Appendix I, paragraph (a), of this part, or similar trip as approved by the Administrator.

(b) *Malfunction descriptions.* The OBD system shall detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part, excluding those test procedures described in § 86.158–00. Paragraph (b)(1) of this section does not apply to diesel cycle light-duty vehicles or diesel cycle light-duty trucks, except where the catalyst is needed for NMHC control. Paragraphs (b)(2), (b)(3), and (b)(4) of this section do not apply to diesel cycle light-duty vehicles or diesel cycle light-duty trucks.

(1) Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC standard, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system.

(2) Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_X; and any misfire capable of damaging the catalytic converter.

(3) Oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_X.

(4) Any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; any absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for NMHC, CO or NO_X. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system shall indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph shall be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges), and functionality checks for computer

output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility; malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system shall be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light.* The OBD system shall incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, it shall display ''Check Engine,'' ''Service Engine Soon,'' a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle shall not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL shall illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL shall blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL shall maintain a steady illumination when the misfire is not occurring and shall remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL shall also illuminate when the vehicle's ignition is in the ''key-on'' position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered (engine speed is within 375 rpm, engine load is within 20 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected), and no new malfunctions have been detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The emission control diagnostic system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per SAE J1979 specifications as incorporated by reference in paragraph (h) of this section.

(1) A diagnostic trouble code shall be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code shall identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded ''ON,'' MIL commanded ''OFF'').

(2) For a single misfiring cylinder, the diagnostic trouble code(s) shall uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. The diagnostic trouble code shall identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, shall be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to ''not ready'' status upon key-on or key-off; intentional setting of readiness codes to ''not ready'' status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to ''ready'' status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, ''freeze frame'' engine conditions present at the time shall be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions shall be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions shall include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer shall include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information shall be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using

information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals shall be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals shall be clearly identified separately from default value or limp home signals.

(3) For all emission control systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared shall be available through the standardized data link connector per SAE J1979 specifications as incorporated by reference in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) The emission control diagnostic system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the diagnostic system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Incorporation by reference materials.* The emission control diagnostic system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at Docket No. A–90–35 at EPA's Air docket (LE–131), room 1500 M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 ''Class B Data Communication Network Interface,'' (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 July 1996 E/E Diagnostic Test Modes.''

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 July 1996 ''Recommended Practices for Diagnostic Trouble Code Definitions.''

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 January 1995 ''Diagnostic Connector.''

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 February 1994 ''Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information,'' may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) [Reserved]

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility of the given monitor, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the non-compliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor (''major'' diagnostic monitors being those for the catalyst, oxygen sensor, engine misfire, and evaporative leaks), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (e.g. natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel vehicles shall be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that compliance with Title 13 California Code Secs. 1968.1(b)(4.2.2), pertaining to evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section, and the deficiency fine provisions of 1968.1(m)(6.1) and (6.2) shall not apply.

(k) For engine families required to have an emission control diagnostic system (an OBD system), certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles. Only paragraphs (k)(5) and (k)(6) of this section apply to diesel cycle vehicles and diesel cycle trucks where such vehicles and trucks are so equipped.

(1) A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard above the NMHC emission level measured using a representative 4000 mile catalyst system.

(2) An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards for NMHC, CO or NO_X.

(3) Any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_X.

(4) A vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake

manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for NMHC, CO or NO_X.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

§ 86.1807–01 Vehicle labeling.

(a) The manufacturer of any motor vehicle subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described in this section, containing the information prescribed in this section, to all production models of such vehicles available for sale to the public and covered by a Certificate of Conformity under § 86.1848–01.

(1) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(2) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(3) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Vehicle Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine displacement (in cubic inches or liters), test group identification and evaporative/refueling family identification;

(iv) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles or light-duty trucks;

(vi) The exhaust emission standards to which the test group is certified, and the corresponding exhaust emission standards which the test group must meet in-use. In lieu of this requirement, the standardized test group name designated by the Agency may be used;

(vii) The vacuum hose routing diagram is required if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose diagram provided that the vacuum hose diagram is placed in a visible and accessible position as described in this section;

(viii) Vehicles granted final admission under 40 CFR 85.1505 must comply with the labeling requirements contained in 40 CFR 85.1510;

(ix) (A) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.1829–01(b)(4)(iii), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(B) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.1829–01(b)(4)(iv), a statement indicating:

(1) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed; and

(2) The name of the Administrator-approved alternative test procedure to be performed;

(x) For vehicles designed to be capable of operating on fuels other than gasoline or diesel, the statement ''This vehicle is certified to operate on [specify fuel(s)]''.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described n 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: ''Vehicle Emission Control Information.''

(ii)(A) For light-duty vehicles, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-Fueled 20XX Model Year New Motor Vehicles.''

(B) For light-duty trucks, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-Fueled 20XX Model Year New Light-Duty Trucks.''

(iii) One of the following statements, as applicable, in letters and numerals not less than six-thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: ''NON-CATALYST'';

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: ''CATALYST—APPROVED FOR IMPORT'';

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: ''CATALYST''.

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: ''This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the

special provisions of § 86.1801–01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area.''

(e) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles and light-duty trucks shall comply with SAE Recommended Practices J1877 ''Recommended Practice for Bar-Coded Vehicle Identification Number Label,'' (October 1993), and J1892 ''Recommended Practice for Bar-Coded Vehicle Emission Configuration Label,'' (July 1994). SAE J1877 and J1892 are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at Docket No. A–90–35 at EPA's Air Docket (LE–131), room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) The Administrator may approve in advance other label formats provided the information contained on the label is substantively the same as that required in paragraph (c) of this section.

§ 86.1808–01 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle subject to the standards prescribed in this subpart, as applicable, written instructions for the proper maintenance and use of the vehicle, by the purchaser consistent with the provisions of § 86.1834–01, which establishes what scheduled maintenance the Administrator approves as being reasonable and necessary.

(1) The maintenance instructions required by this section shall be in clear, and to the extent practicable, nontechnical language.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(b) Instructions provided to purchasers under paragraph (a) of this section shall specify the performance of all scheduled maintenance performed by the manufacturer on certification durability vehicles and, in cases where the manufacturer performs less maintenance on certification durability data vehicles than the allowed limit, may specify the performance of any scheduled maintenance allowed under § 86.1834–01.

(c) Scheduled emission-related maintenance in addition to that performed under § 86.1834–01 may only be recommended to offset the effects of abnormal in-use operating conditions, except as provided in paragraph (d) of this section. The manufacturer shall be required to demonstrate, subject to the approval of the Administrator, that such maintenance is reasonable and technologically necessary to assure the proper functioning of the emission control system. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator, from that approved under § 86.1834–01.

(d) Inspections of emission-related parts or systems with instructions to replace, repair, clean, or adjust the parts or systems if necessary, are not considered to be items of scheduled maintenance which insure the proper functioning of the emission control system. Such inspections, and any recommended maintenance beyond that approved by the Administrator as reasonable and necessary under paragraphs (a), (b), and (c) of this section, may be included in the written instructions furnished to vehicle owners under paragraph (a) of this section, provided that such instructions clearly state, in a form approved by the Administrator, that the owner need not perform such inspections or recommended maintenance in order to maintain the emission warranty or manufacturer recall liability.

(e) If the vehicle has been granted an alternative useful life period under the provisions of § 86.1805–01(c), the manufacturer may choose to include in such instructions an explanation of the distinction between the alternative useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuild for the test group represented by the engine used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, non-technical language that is understandable to the ultimate purchaser.

(f) Emission control diagnostic service information:

(1) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(2) Emission-related information includes, but is not limited to:

(i) Information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system;

(ii) Information for any system, component, or part that is likely to impact emissions, such as transmission systems; and

(iii) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program, after such finding has been communicated to the affected manufacturer(s).

(3) All information required to be made available by this section shall be made available to persons referred to in this section at a fair and reasonable price, as determined by the Administrator. In reaching a decision, the Administrator shall consider all relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size

of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to August 9, 1995, volume discounts, and inflation.

(4) Any information which is not provided at a fair and reasonable price shall be considered unavailable. Manufacturers shall make the information required under this section available to persons specified in paragraph (f)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(5) Each manufacturer shall provide in a manner specified in paragraph (g)(9) of this section an index of the information required to be made available by this section for vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraph (g)(10) of this section. This index shall:

(i) Be updated on the first and third Monday of each month;

(ii) Provide titles that either adequately describes the contents of the document to which it refers or provides a brief description of the information contained in that document; and

(iii) Provide the cost of information and where it can be obtained.

(6) Manufacturers shall make the information required under this section available to persons specified in paragraph (f)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(7) Each manufacturer shall maintain the index of information specified in paragraph (f)(5) of this section on FedWorld or other database designated by the Administrator. Manufacturers shall inform persons specified in paragraph (f)(1) of this section about the availability of the index in a manner prescribed by the Administrator.

(8) Each manufacturer shall be responsible for paying its pro rata share of any costs associated with establishing and maintaining the index of emission-related service and repair information provided for in paragraphs (f)(5) and (f)(7) of this section.

(9) Manufacturers or their designated distributors must mail requested information within one business day of receiving an order, and shall provide overnight delivery if the ordering party requests it and assumes the cost of delivery.

(10) All emission-related data stream information made available to manufacturers' franchised dealerships (or others in the service industry) shall be made available to the persons indicated in paragraph (f)(1) of this section either through provision of manufacturer equipment and tools or through provision of such information to equipment and tool manufacturers.

(11) A manufacturer shall only provide bi-directional control to its franchised dealerships if it provides equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or if it provides such capabilities directly to persons specified in paragraph (f)(1) of this section by offering for sale at a reasonable cost through manufacturer tools.

(12) Manufacturers shall make data stream information and bi-directional control information available as specified in paragraphs (f)(10) and (f)(11) of this section.

(13) Manufacturers shall make available to persons indicated in paragraph (f)(1) of this section in the manner described in paragraph (f)(16) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that are issued by manufacturers at the same time they are made available to dealerships.

(14) For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

(15) [Reserved]

(16) Manufacturers shall either offer for sale at a competitive market price a reprogramming tool that interfaces with a substantial majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. Any method adopted by a manufacturer by which reprogramming is made available to persons specified in paragraph (f)(1) of this section shall not impose a significant burden on such providers beyond that experienced by dealerships.

(17) Manufacturers shall be responsible for ensuring that persons specified in paragraph (f)(1) of this section shall have access to reprogramming services at a reasonable cost and in a timely manner.

(18) Manufacturers shall provide persons specified in paragraph (f)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(19) Manufacturers shall either make available to aftermarket tool and equipment companies no later than the date of model introduction any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by persons specified in paragraph (f)(1) of this section to diagnose, service and repair emission-related parts, components and systems or manufacturers may sell their own diagnostic tools and equipment to persons specified in paragraph (f)(1) of this section if the price of such tools is reasonable.

(20) A manufacturer is subject to a penalty of up to $25,000 per day per violation for failure to make available the information required by this section.

§ 86.1809–01 Prohibition of defeat devices.

(a) No new light-duty vehicle or light-duty truck shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO emission control, the Administrator will use a guideline to determine the appropriateness of the CO emission control at ambient temperatures between 25 deg. F (−4 deg. C) and 68 deg. F (20 deg. C). The guideline for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 deg. F (−4 deg. C) and the CO standard applicable at 68 deg. F (20 deg. C). For vehicles that exceed this CO emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 deg. F (−7 deg. C) emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(2) If the CO emission level does not exceed the 20 deg. F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) For vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal or Supplemental Federal emissions test procedures (FTP or SFTP) when the vehicle is operated

under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) Information requirements:

(i) Upon request by the Administrator, the manufacturer will provide an explanation containing detailed information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO defeat devices under this paragraph (d), the manufacturer shall provide an explanation which must show, to the satisfaction of the Administrator, that CO emissions are reasonably controlled in reference to the linear guideline, across the intermediate temperature range.

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated.

(a) Any device, system or element of design installed on or incorporated in a new motor vehicle to enable such vehicle to conform to the standards imposed by this subpart:

(1) Shall not in its operation or function cause the emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such vehicle without such system, except as specifically permitted by regulation; and

(2) Shall not in its operation, function or malfunction result in any unsafe condition endangering the vehicle, its occupants, or persons or property in close proximity to the vehicle.

(b) In establishing the physically adjustable range of each adjustable parameter on a new motor vehicle, the manufacturer shall ensure that, taking into consideration the production tolerances, safe vehicle drive ability characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act.

(c) Every manufacturer of new motor vehicles subject to any of the standards imposed by this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicles (or motor vehicle engines) in accordance with good engineering judgment to ascertain that such test vehicles will meet the requirements of this section for the useful life of the vehicle.

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2001 and later model year light-duty vehicle or light-duty truck.

(e) *On-board diagnostics.* All light-duty vehicles and light-duty trucks must have an on-board diagnostic system as described in § 86.1806–01.

(f) *Altitude requirements.* Except for supplemental exhaust emission standards (which apply only at low altitude conditions), all emission standards apply at low altitude conditions and at high altitude conditions.

(g) The standards set forth in this part refer to test procedures set forth in subparts B, C, O and P of this part.

(h) For methanol-fueled and natural gas-fueled vehicles, hydrocarbon standards refer to hydrocarbon equivalents and nonmethane hydrocarbon standards refer to nonmethane hydrocarbon equivalents.

(i) *Supplemental FTP general provisions.* (1) Implementation schedules. A minimum of the percentage of a manufacturer's model year sales of light-duty vehicles or light light-duty trucks (considered independently) shown in Table S01–1 and heavy light-duty trucks shown in Table S01–2 shall not exceed the applicable SFTP standards found in paragraph (b) of §§ 86.1811–01, 1812–01, 1813–01, 1814–02, and 1815–02 when tested under the applicable procedures in subpart B of this part. Tables S01–1 and S01–2 follow:

TABLE S01–1.—SFTP IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS

Model year	Percentage
2000	40
2001	80
2002	100

TABLE S01–2.—SFTP IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS

Model year	Percentage
2002	40
2003	80

TABLE S01–2.—SFTP IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS—Continued

Model year	Percentage
2004	100

(2) Optionally, a minimum of the percentage shown in Table S01–1 of a manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the applicable SFTP standards. Under this option, the light-duty vehicles shall not exceed the applicable SFTP standards in § 86.1811–01(b), and the light light-duty trucks shall not exceed the applicable SFTP standards in § 86.1812–01(b) or § 86.1813–01(b) as applicable.

(3) Sales percentages for the purposes of determining compliance with the applicable SFTP emission standards shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (i)(2) of this section is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(4) The SFTP standards do not apply to vehicles or trucks certified on alternative fuels, but the standards do apply to the gasoline and diesel fuel operation of flexible fuel vehicles and trucks and dual fuel vehicles and trucks.

(5) The SFTP standards do not apply to vehicles or trucks tested at high altitude.

(6) The air to fuel ratio shall not be richer at any time than the leanest air to fuel mixture required to obtain maximum torque (lean best torque), plus a tolerance of six percent. The Administrator may approve a manufacturer's request for additional enrichment if it can be shown that additional enrichment is needed to protect the engine or emissions control hardware.

(7) The requirement to use a single roll dynamometer (or a dynamometer which produces equivalent results), discussed in §§ 86.108–00, 86.118–00, and 86.129–00 of subpart B of this part, applies to all SFTP and FTP test elements as set forth in subpart B of this part for test groups which are designated as SFTP compliant under the implementation schedules in Tables

S01–1 and S01–2 in paragraph (i)(1) of this section.

(8) Small volume provisions. (i) Light-duty vehicles and light light-duty trucks manufactured by small volume manufacturers, as described in § 86.1801–01(d), are exempt from the requirements of this paragraph until model year 2002, when 100 percent compliance with the provisions of this paragraph (i) and the SFTP standards in § 86.1811–01(b) and § 86.1812–01(b) is required. This exemption does not apply to small volume test groups as defined in § 86.1838–01(b)(2).

(ii) Heavy light-duty trucks manufactured by small volume manufacturers, as defined in § 86.1801–01, are exempt from the requirements of this paragraph (i) until model year 2004 when 100 percent compliance with the provisions of this paragraph and the SFTP standards in §§ 86.1814–02(b) and 86.1815–02(b) is required. This exemption does not apply to small volume test groups as defined in § 86.1838–01(b)(2).

(9) [Reserved]

(10) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which test groups will be used to attain the required implementation schedule sales percentages for certification purposes.

(11) A manufacturer cannot use one set of test groups to meet its intermediate useful life standards and another to meet its full useful life standards. The same test groups which are used to meet the intermediate useful life standards will be required to meet the corresponding full useful life standards.

(12) Compliance with composite standards shall be demonstrated using the calculations set forth in § 86.164–00.

(j) *Evaporative emissions general provisions.* (1) The evaporative standards in §§ 86.1811–01(d), 86.1812–01(d), 86.1813–01(d), 86.1814–01(d) and 86.1815–01(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

(2) For certification testing only, manufacturers may conduct testing to quantify a level of non-fuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of non-fuel background emissions may be subtracted from evaporative emission test results from certification vehicles if approved in advance by the Administrator.

(3) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle or light-duty truck during in-use operation shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) *Refueling emissions general provisions.* (1) Implementation schedules. (i) Tables S01–3, S01–4, and S01–5 in this paragraph (k)(1)(i) give the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles and light-duty trucks which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1811–01(e), 86.1812–01(e), 86.1813–01(e), 86.1814–01(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Tables S01–3, S01–4, and S01–5 follow:

TABLE S01–3—LIGHT-DUTY VEHICLES

Model year	Percentage
1998 [a]	40
1999 [a]	80
2000 [a]	100

[a] **Note:** This subpart prescribes standards for 2001 and later MY vehicles. However, the implementation phase-in periods prior to this date are included for ease of reference.

TABLE S01–4—LIGHT LIGHT-DUTY TRUCKS

Model year	Percentage
2001	40
2002	80
2003	100

TABLE S01–5—HEAVY LIGHT-DUTY TRUCKS

Model year	Percentage
2004	40
2005	80
2006	100

(ii) Either manufacturer sales or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option.

(2) Sales percentages for the purposes of determining compliance with the applicable refueling emission standards shall be based on total actual U.S. sales of light-duty vehicles or light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(3) Refueling receptacle requirements. Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1(b)(3)). This requirement is subject to the phase-in schedules in Tables S01–3 and S01–4 of paragraph (k)(1)(i) of this section.

(l) Fuel dispensing spitback testing waiver. (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e) and 86.1813–01(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) The manufacturer certifies that the vehicle inherently meets the fuel dispensing spitback standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent noncompliance with the fuel dispensing spitback standard.

(m) Inherently low refueling emission testing waiver. (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e) and 86.1813–01(e) provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg.F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: ''Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system.''

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(n) Fixed liquid level gauge waiver. Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be

opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

§ 86.1811–01 Emission standards for light-duty vehicles.

This section applies to 2001 and later model year light-duty vehicles fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) Total hydrocarbons: 0.41 grams per mile, except natural gas, which has no standard.

(ii) Non-methane hydrocarbons: 0.25 grams per mile.

(iii) Carbon monoxide: 3.4 grams per mile.

(iv) Oxides of nitrogen: 0.4 grams per mile except diesel fuel which has a 1.0 gram per mile standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.31 grams per mile.

(iii) Carbon monoxide: 4.2 grams per mile.

(iv) Oxides of nitrogen: 0.6 grams per mile except diesel fuel which has a 1.25 gram per mile standard.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emission standards.* (1) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.65 grams per mile except diesel fuel which has a 1.48 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.0 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 9.0 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 3.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.91 grams per mile except diesel-fueled which have a 2.07 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.7 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.1 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.2 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty vehicles shall not exceed the cold temperature CO standard of 10.0 grams carbon monoxide per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emission standards.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons.

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol-fueled only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol-fueled only.* For the running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol-fueled only.* For the fuel dispensing spitback test: 1.0 gram hydrocarbon (carbon for methanol-fueled) per test.

(2) [Reserved]

(e) *Refueling emissions.* Refueling emissions from 2001 and later model year light-duty vehicles shall not exceed the following standards:

(1) For gasoline-fueled, diesel fueled, and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

§ 86.1812–01 Emission standards for light-duty trucks 1.

This section applies to 2001 and later model year light-duty truck 1's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.25 grams per mile.

(iii) Carbon monoxide: 3.4 grams per mile.

(iv) Oxides of nitrogen: 0.4 grams per mile except diesel fuel which have a 1.0 gram per mile standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions from 2001 and later model year light-duty truck 1's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile, except natural gas, which has no standard. For purposes of this section, the full useful life total hydrocarbon standard is for 11 years or 120,000 miles whichever occurs first.

(ii) Non-methane hydrocarbons: 0.31 grams per mile.

(iii) Carbon monoxide: 4.2 grams per mile.

(iv) Oxides of nitrogen: 0.6 grams per mile except diesel fuel which have a 1.25 gram per mile standard.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emission standards.* (1) Supplemental exhaust emissions from gasoline-fueled and

diesel-fueled light-duty truck 1's shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.65 grams per mile except diesel fuel which have a 1.48 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.0 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 9.0 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 3.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.91 grams per mile except diesel fuel which have a 2.07 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.7 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.1 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.2 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 1's with a loaded vehicle weight of 3,750 lbs or less shall not exceed the cold temperature CO standard of 10.0 grams carbon monoxide per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 1's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons.

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) [Reserved]

(e) Refueling emissions. Refueling emissions from light-duty truck 1's shall be phased in, in accordance with the schedule in table S01–4 of § 86.1810–01 not to exceed the following emission standards:

(1) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1813–01 Emission standards for light-duty trucks 2.

This section applies to 2001 and later model year light-duty truck 2's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emissions.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved].

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel fueled vehicles which have no standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile, except natural gas, which has no standard. For purposes of this section, the full useful life total hydrocarbon standard is for 11 years or 120,000 miles whichever occurs first.

(ii) Non-methane hydrocarbons: 0.40 grams per mile.

(iii) Carbon monoxide: 5.5 grams per mile.

(iv) Oxides of nitrogen: 0.97 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 2's shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 2's shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 1.37 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 4.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 14.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 5.5 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 2's during cold temperature testing shall not exceed a cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 2's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons (Total Hydrocarbon Equivalent for methanol-fueled).

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) [Reserved]

(e) *Refueling emissions.* Refueling emissions from light-duty truck 2's shall be phased in, in accordance with the schedule in table S01–4 of § 86.1810–01 not to exceed the following emission standards:

(1) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–01 Emission standards for light-duty trucks 3.

This section applies to 2001 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards. (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:*

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from 2001 and later model year light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) [Reserved]

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas-and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–02 Emission standards for light-duty trucks 3.

This section applies to 2002 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards. (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:*

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from 2001 and later model year light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which have no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions for 2002 and later model year gasoline-fueled light-duty truck 3's shall not

exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from 2002 and later model year gasoline-fueled light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.44 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 5.6 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 16.9 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 6.4 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–04 Emission standards for light-duty trucks 3.

This section applies to 2004 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which have no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.44 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 5.6 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 16.9 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 6.4 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from light-duty truck 3's shall be phased in, in accordance with the schedule in table S01–5 of § 86.1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1815–01 Emission standards for light-duty trucks 4.

This section applies to 2001 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.39 grams per mile.

(iii) Carbon monoxide: 5.0 grams per mile.

(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.56 grams per mile.

(iii) Carbon monoxide: 7.3 grams per mile.

(iv) Oxides of nitrogen: 1.53 grams per mile.

(v) Particulate matter: 0.12 grams per mile.

(b) [Reserved]

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§ 86.1815–02 Emission standards for light-duty trucks 4.

This section applies to 2002 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.39 grams per mile.

(iii) Carbon monoxide: 5.0 grams per mile.

(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.56 grams per mile.

(iii) Carbon monoxide: 7.3 grams per mile.

(iv) Oxides of nitrogen: 1.53 grams per mile.

(v) Particulate matter: 0.12 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.49 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 4.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 13.2 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 5.0 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 2.09 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 6.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 19.3 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 7.3 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§ 86.1815–04 Emission standards for light-duty trucks 4.

This section applies to 2004 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.39 grams per mile.

(iii) Carbon monoxide: 5.0 grams per mile.

(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.56 grams per mile.

(iii) Carbon monoxide: 7.3 grams per mile.

(iv) Oxides of nitrogen: 1.53 grams per mile.

(v) Particulate matter: 0.12 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.49 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 4.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 13.2 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 5.0 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at full useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 2.09 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 6.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 19.3 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 7.3 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from light-duty truck 4's shall be phased in, in accordance with the schedule in table S01–5 of § 1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§§ 86.1816 through 86.1819 [Reserved].

§ 86.1820–01 Durability group determination.

This section applies to the grouping of vehicles into durability groups. Manufacturers shall divide their product line into durability groups based on the following criteria:

(a) The vehicles covered by a certification application shall be divided into groups of vehicles which are expected to have similar emission deterioration and emission component durability characteristics throughout their useful life. Manufacturers shall use good engineering judgment in dividing their vehicles into durability groups. Such groups of vehicles are defined as durability groups.

(b) To be included in the same durability group, vehicles must be identical in all the respects listed in paragraphs (b) (1) through (7) of this section:

(1) Combustion cycle (e.g., two stroke, four stroke, Otto cycle, diesel cycle).

(2) Engine type (e.g., piston, rotary, turbine, air cooled versus water cooled).

(3) Fuel used (e.g., gasoline, diesel, methanol, ethanol, CNG, LPG, flexible fuels).

(4) Basic fuel metering system (e.g., throttle body injection, port injection (including central port injection), carburetor, CNG mixer unit).

(5) Catalyst construction (for example, beads or monolith).

(6) Precious metal composition of the catalyst by the type of principal active material(s) used (e.g., platinum based oxidation catalyst, palladium based oxidation catalyst, platinum and rhodium three-way catalyst, palladium and rhodium three way catalyst, platinum and palladium and rhodium three way catalyst).

(7) The manufacturer must choose one of the following two criteria:

(i) Grouping statistic:

(A) Vehicles are grouped based upon the value of the grouping statistic determined using the following equation:

$$GS = [(\text{Cat Vol})/(\text{Disp})] \times \text{Loading Rate}$$

Where:

GS = Grouping Statistic used to evaluate the range of precious metal loading rates and relative sizing of the catalysts compared to the engine displacement that are allowable within a durability group. The grouping statistic shall be rounded to a tenth of a gram/liter, in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1).

Cat Vol = Total volume of the catalyst(s) in liters.

Disp = Displacement of the engine in liters.

Loading rate = The mass of total precious metal(s) in the catalyst (or the total mass of all precious metal(s) of all the catalysts if the vehicle is equipped with multiple catalysts) in grams divided by the total volume of the catalyst(s) in liters.

(B) Engine-emission control system combinations which have a grouping statistic which is either less than 25 percent of the largest grouping statistic value, or less than 0.2 g/liter (whichever allows the greater coverage of the durability group) shall be grouped into the same durability group.

(ii) The manufacturer may elect to use another procedure which results in at least as many durability groups as required using criteria in paragraph (b)(7)(i) of this section providing that only vehicles with similar emission deterioration or durability are combined into a single durability group.

(c) Where vehicles are of a type which cannot be divided into durability groups based on the criteria listed above (such as non-catalyst control system approaches), the Administrator will establish durability groups for those vehicles based upon the features most related to their exhaust emission deterioration characteristics.

(d) Manufacturers may further divide groups determined under paragraph (b) of this section provided the Administrator is notified of any such changes prior to or concurrently with the submission of the application for certification (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(e) Manufacturers may request the Administrator's approval to combine vehicles into a single durability group which would normally not be eligible to be in a single durability group. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the same degree of emission deterioration;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient In-Use Verification Program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1821–01 Evaporative/refueling family determination.

(a) The gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles and light-duty trucks described in a certification application will be divided into groupings which are expected to have similar evaporative and/or refueling emission characteristics (as applicable) throughout their useful life. Each group of vehicles with similar evaporative and/or refueling emission characteristics shall be defined as a separate evaporative/refueling family. Manufacturers shall use good engineering judgment to determine evaporative/refueling families.

(b) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative/refueling family, vehicles must be similar with respect to the items listed in paragraphs (b) (1) through (9) of this section.

(1) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(2) Basic canister design.

(i) Working capacity—grams adsorption within a 10 g. range.

(ii) System configuration—number of canisters and method of connection (i.e., series, parallel).

(iii) Canister geometry, construction and materials.

(3) Fuel system.

(4) Type of refueling emission control system—non-integrated or integrated with the evaporative control system. Further, if the system is non-integrated, whether or not any other evaporative emissions, e.g. diurnal or hot soak emissions, are captured in the same storage device as the refueling emissions.

(5) Fillpipe seal mechanism—mechanical, liquid trap, other.

(6) Vapor control system or method of controlling vapor flow through the vapor line to the canister (for example, type of valve, vapor control strategy).

(7) Purge control system (for example, type of valve, purge control strategy).

(8) Vapor hose material.

(9) Fuel tank material.

(c) Where vehicles are of a type which cannot be divided into evaporative/refueling families based on the criteria listed above (such as non-canister control system approaches), the Administrator will establish families for those vehicles based upon the features most related to their evaporative and/or refueling emission characteristics.

(d) Manufacturers may further divide families determined under paragraph (b) of this section provided the Administrator is notified of any such changes prior to or concurrently with the submission of the application for certification (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(e) Manufacturers may petition the Administrator to combine vehicles into a single evaporative/refueling family which would normally not be eligible to be in a single evaporative/refueling family. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the same degree of evaporative emission deterioration;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient In-Use Verification Program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1822–01 Durability data vehicle selection.

(a) Within each durability group, the vehicle configuration which is expected to generate the highest level of exhaust emission deterioration on candidate vehicles in use, considering all constituents, shall be selected as the durability data vehicle configuration. The manufacturer will use good engineering judgment in making this selection.

(b) The manufacturer may select, using good engineering judgment, an equivalent or worst-case configuration in lieu of testing the vehicle selected in paragraph (a) of this section. Carryover data satisfying the provisions of § 86.1839–01 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

§ 86.1823–01 Durability demonstration procedures for exhaust emissions.

This section applies to light-duty vehicles, light-duty trucks, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c)(1). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements.

(a) The manufacturer shall propose a durability program consisting of the elements discussed in paragraphs (a)(1) through (a)(3) of this section for advance approval by the Administrator. The durability process shall be designed to effectively predict the expected deterioration of candidate in-use vehicles over their full and intermediate useful life and shall be consistent with good engineering judgment. The Administrator will approve the program if he/she determines that it is reasonably expected to meet these design requirements.

(1) *Service accumulation method.* (i) Each durability program shall include a service accumulation method designed to effectively predict the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles.

(ii) Manufacturers may propose service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(A) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(B) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(2) *Vehicle/component selection method.* The manufacturer shall propose a vehicle/component selection method for advance approval by the Administrator. The procedure for selecting durability data vehicles and components shall meet the requirements of § 86.1822–01.

(3) *Use of deterioration program to determine compliance with the standard.* The manufacturer shall propose procedures for the determination of compliance with the standards for advance approval by the Administrator. The calculation of deterioration factors and/or the determination of vehicle compliance

shall be according to the procedures approved in advance by the Administrator. The Administrator will allow two methods for using the results of the deterioration program to determine compliance with the standards. Either a deterioration factor (DF) is calculated and applied to the emission data vehicle (EDV) emission results or aged components are installed on the EDV prior to emission testing. Other methods may be approved by the Administrator if they result in an effective prediction of intermediate and full useful life emission levels on candidate in-use vehicles.

(i) *Use of Deterioration factors.* (A) Deterioration factors are calculated using all FTP emission test data generated during the durability testing program except as noted:

(1) Multiple tests at a given mileage point are averaged together unless the same number of tests are conducted at each mileage point.

(2) Before and after maintenance test results are averaged together.

(3) Zero-mile test results are excluded from the calculation.

(4) When calculating intermediate and full useful life deterioration factors all data points should be included in the calculations, except that total hydrocarbon (THC) test points beyond the 50,000-mile (useful life) test point shall not be included in the calculations.

(5) A procedure may be employed to identify and remove from the DF calculation those test results determined to be statistical outliers providing that the outlier procedure is consistently applied to all vehicles and data points and is approved in advance by the Administrator.

(B) The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The deterioration may be a multiplicative or additive factor. Separate factors will be calculated for each regulated emission constituent and for the full and intermediate useful life periods as applicable. Separate DF's are calculated for each durability group except as provided in paragraph (c) of this section.

(1) A multiplicative DF will be calculated by taking the ratio of the full or intermediate useful life mileage level, as appropriate (rounded to four decimal places), divided by the stabilized mileage (reference § 86.1831–01(c), e.g., 4000-mile) level (rounded to four decimal places) from the regression analysis; the result shall be rounded to three-decimal places of accuracy. The rounding required in this paragraph shall be conducted in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1). Calculated DF values of less than one shall be changed to one for the purposes of this paragraph.

(2) An additive DF will be calculated to be the difference between the full or intermediate useful life mileage level (as appropriate) minus the stabilized mileage (reference § 86.1831–01(c), e.g. 4000-mile) level from the regression analysis. The full useful life regressed emission value, the stabilized mileage regressed emission value, and the DF result shall be rounded to the same precision and using the same procedures as the raw emission results according to the provisions of § 86.1837–01. Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(C) The DF calculated by these procedures will be used for determining compliance with FTP exhaust emission standards, SFTP exhaust emission standards, and cold CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold CO test data to determine compliance with cold CO emission standards. Also at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using US06 and/or air conditioning (SC03) test data to determine compliance with the SFTP emission standards.

(ii) *Installation of aged components on emission data vehicles.* For full and intermediate useful life compliance determination, the manufacturer may elect to install aged components on an EDV rather than applying a deterioration factor. Different sets of components may be aged for full and intermediate useful life periods. The list of components to be installed, the techniques used to select physical parts to be aged, and the aging techniques employed to age the components must be approved in advance by the Administrator.

(b) In addition to the provisions of paragraph (a) of this section, manufacturers shall submit the following information when applying for the Administrator's approval of a durability program:

(1) Analysis and/or data demonstrating the adequacy of the manufacturer's durability processes to effectively predict emission compliance for candidate in-use vehicles. All regulated emission constituents and all test procedures shall be considered in this analysis. This data and discussion shall cover the breadth of the manufacturer's product line that will be covered by this durability procedure.

(2) Discussion of the manufacturer's in-use verification procedures including testing performed, vehicle procurement procedures used, and vehicles rejection criteria used. Any questionnaires used or inspections performed should also be documented in the manufacturer's submission. The in-use verification program shall meet the requirements of §§ 86.1845–01, 86.1846–01 and 86.1847–01.

(c) *Carryover and carryacross.* (1) Manufacturers may carry over or carry across mileage accumulation data, aged hardware, or deterioration factors according to the provisions of § 86.1839–01 using good engineering judgment.

(2) For the 2001, 2002, and 2003 model years, the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094–13(c), the Alternate Service Accumulation Durability Program described in § 86.094–13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094–13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

(i) This provision is limited to the use of existing data used for a 2000 model year or earlier certification. All new exhaust durability data must be generated according to the provisions of paragraph (a)(1) of this section.

(ii) The manufacturer shall exercise good engineering judgment when determining the eligibility to use carryover exhaust emission DF's and the selection of the vehicle used as the source of carryover.

(iii) Starting with the 2004 model year, manufacturers must meet the provisions of paragraphs (a) and (b) of this section.

(d) *Data reporting requirements.* Data reporting requirements are contained in § 86.1844–01.

(e) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(f) *In-use verification.* The durability program must meet the requirements of § 86.1845–01.

(g) The manufacturer shall apply the approved durability process to a

durability group, including durability groups in future model years, if the durability process will effectively predict (or alternatively, overstate) the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles. The manufacturer shall use good engineering judgment in determining the applicability of the durability program to a durability group.

(1) The manufacturer may make modifications to an approved durability process using good engineering judgment for the purpose of ensuring that the modified process will effectively predict, (or alternatively, overstate) the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles.

(2) The manufacturer shall notify the Administrator of its determination to use an approved (or modified) durability program on particular test groups and durability groups prior to emission data vehicle testing for the affected test groups (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(3) Prior to certification, the Administrator may reject the manufacturer's determination in paragraph (g) of this section if it is not made using good engineering judgment or it fails to properly consider data collected under the provisions of §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability process has not been shown to effectively predict emission levels or compliance with the standards in use on candidate vehicles for particular test groups which the manufacturers plan to cover with the durability process.

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). Such withdrawals shall apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected. Prior to such a withdrawal the Administrator shall give the manufacturer a preliminary notice at least 60 days prior to the final decision. During this period, the manufacturer may submit technical discussion, statistical analyses, additional data, or other information which is relevant to the decision. The Administrator will consider all information submitted by the deadline before reaching a final decision.

(i) Any manufacturer may request a hearing on the Administrator's withdrawal of approval in paragraph (h) of this section. The request shall be in writing and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles and light-duty trucks. The manufacturer shall determine a durability process that will predict the expected evaporative emission deterioration of candidate in-use vehicles over their full useful life. The manufacturer shall use good engineering judgment in determining this process.

(a) Service accumulation method. (1) The manufacturer shall develop a service accumulation method designed to effectively predict the deterioration of candidate in-use vehicles' evaporative emissions in actual use over its full useful life. The manufacturer shall use good engineering judgement in developing this method.

(2) The manufacturers may develop a service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(i) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(ii) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(b) Vehicle/component selection method. The manufacturer shall determine a vehicle and component selection procedure which results in representative test vehicles and reflects good engineering judgment.

(c) The manufacturer shall calculate a deterioration factor which is applied to the evaporative emission results of the emission data vehicles. The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage evaporative level minus the stabilized mileage (e.g., 4000-mile) evaporative level from the regression analysis. The DF and the full and stabilized mileage emission levels shall be rounded to two decimal places of accuracy in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1(b)(1). Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(d) Emission component durability. The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(e) In-use verification. The durability program must meet the requirements of § 86.1845–01.

(f) Information obtained under §§ 86.1845–01, 86.1846–01, 86.1847–01 or from other sources shall be used by the manufacturer in developing new durability processes and/or updating existing durability processes using good engineering judgment.

§ 86.1825–01 Durability demonstration procedures for refueling emissions.

This section applies to light-duty vehicles, light-duty trucks, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c)(1) which are subject to refueling loss emission compliance. Refer to the provisions of

§§ 86.1811, 86.1812, 86.1813, 86.1814, and 86.1815 to determine applicability of the refueling standards to different classes of vehicles for various model years. Diesel fuel vehicles may qualify for an exemption to the requirements of this section under the provisions of § 86.1810. The manufacturer shall determine a durability process that will predict the expected refueling emission deterioration of candidate in-use vehicles over their full useful life. The manufacturer shall use good engineering judgment in determining this process.

(a) Service accumulation method. (1) The manufacturer shall develop a service accumulation method designed to effectively predict the deterioration of candidate in-use vehicles' refueling loss emissions in actual use over its full useful life. The manufacturer shall use good engineering judgement in developing this method.

(2) The manufacturers may develop a service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(i) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(ii) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(b) Vehicle/component selection method. The manufacturer shall determine a vehicle and component selection procedure which results in representative test vehicles and reflects good engineering judgment.

(c) The manufacturer shall calculate a deterioration factor which is applied to the refueling emission results of the emission data vehicles. The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage refueling loss emission level minus the stabilized mileage (e.g., 4000-mile) refueling loss emission level from the regression analysis. The DF and the full and stabilized mileage emission levels shall be rounded to two decimal places of accuracy in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1(b)(1). Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(d) The durability process described in paragraph (a) of this section must be described in the application for certification under the provisions of § 86.1844–01.

(e) Emission component durability. The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(f) In-use verification. The durability program must meet the requirements of § 86.1845–01.

(g) Information obtained under §§ 86.1845–01, 86.1846–01, 86.1847–01 or from other sources shall be used by the manufacturer in developing new durability processes and/or updating existing durability processes using good engineering judgment.

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

(a) *Applicability.* This program is an option available to small volume manufacturers certified under the small volume manufacturer provisions of § 86.1838–01(b)(1) and small volume test groups certified under the small volume test group provisions of § 86.1838–01(b)(2). Manufacturers may elect to use these procedures in lieu of the requirements of §§ 86.1823–01, 86.1824–01, and 86.1825–01 of this subpart.

(b) *Determination of deterioration factors.* No service accumulation method or vehicle/component selection method is required. Deterioration factors for all types of regulated emissions are determined using the provisions in this paragraph. A separate assigned deterioration factor is required for each durability group. Manufacturers shall use good engineering judgment in determining deterioration factors.

(1) Manufacturers with aggregated sales of less than 301 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) may use assigned deterioration factors that the Administrator determines and prescribes.

(i) The deterioration factors will be the Administrator's estimate, periodically updated and published in a guidance document or advisory circular, of the 70th percentile deterioration factors calculated using the industry-wide data base of previously completed durability data vehicles or engines used for certification.

(ii) If there is insufficient deterioration information to calculate an appropriate industry-wide deterioration factor (for example: a new engine technology coupled with a proven emission control system), the Administrator may, at his/her discretion, use alternative methods to develop a deterioration factor.

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying light-duty vehicle or trucks on vehicles equipped with proven emission control systems shall conform to the following provisions:

(i) Manufacturers shall use assigned deterioration factors that the manufacturer determines based on its good engineering judgment.

(A) The manufacturer may not use deterioration factors less than either the average or 70th percentile of all of that manufacturer's deterioration factor data, whichever is less. These minimum deterioration factors shall be calculated according to procedures in paragraph (b)(2)(ii), of this section.

(B) If the manufacturer does not have at least two data points to calculate these manufacturer specific average deterioration factors, then the deterioration factors shall be no less than the EPA supplied industry-wide deterioration factors.

(C) If there is insufficient deterioration information to calculate an appropriate industry-wide deterioration factor (for example, a new engine technology coupled with a proven emission control system), the Administrator may, at his/her discretion, use alternative methods to develop a deterioration factor.

(ii) The manufacturer's minimum deterioration factors shall be calculated using the deterioration factors from all durability groups, within the same vehicle/engine-fuel usage category (e.g., gasoline-fueled light-duty vehicle, etc.) previously certified to the same emission standards.

(A) The manufacturer shall use only deterioration factors from durability groups whose test groups were previously certified by the manufacturer and the deterioration factors shall not be included in the calculation more than once.

(B) The deterioration factors for each pollutant shall be calculated separately.

(C) The manufacturer may, at its option, limit the deterioration factors used in the calculation of the manufacturer's minimum deterioration factors to those from all similar emission control systems to the system being certified if sufficient data (i.e., from at least two certified systems) exists.

(D) All data eligible to be grouped as similar emission control system data shall be used in calculating similar system deterioration factors.

(E) Any deterioration factors used in calculating similar system deterioration factors shall not be included in calculating the manufacturer's minimum deterioration factors used to certify any of the manufacturer's remaining vehicle systems.

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines and certifying light-duty vehicle exhaust emissions from vehicles equipped with unproven emission control systems shall conform to the following provisions:

(i) The manufacturer shall use deterioration factors that the manufacturer determines from official certification durability data generated by vehicles from durability groups representing a minimum of 25 percent of the manufacturer's sales equipped with unproven emission control systems.

(ii) The sales projections are to be based on total sales projected for each test group.

(iii) The durability data vehicle mileage accumulation and emission tests are to be conducted in accordance with § 86.1831–01.

(iv) The manufacturer must develop either deterioration factors or aged components to use on EDV testing by generating durability data in accordance with § 86.1823–01, 86.1824–01, and/or 86.1825–01 on a minimum of 25 percent of the manufacturer's projected sales (based on durability groups) that is equipped with unproven emission control systems.

(v) The manufacturer must complete the 25 percent durability requirement before the remainder of the manufacturer's sales equipped with unproven emission control systems is certified using manufacturer-determined assigned deterioration factors.

(c) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the useful life of the vehicles in actual use (or alternative intervals as permitted in § 86.1805–01).

§ 86.1827–01 Test group determination.

This section applies to the grouping of vehicles into test groups within a durability group. The vehicles covered by an application within a durability group shall be divided into test groups based on the following criteria. The manufacturer shall use good engineering judgment in grouping vehicles into test groups.

(a) To be included in the same test group, vehicles must be identical in all following respects:

(1) Durability group;

(2) Engine displacement (within a total band width of 15 percent of the largest displacement or 50 CID, whichever is larger);

(3) Number of cylinders or combustion chambers;

(4) Arrangement of cylinders or combustion chambers (e.g. in-line, v-shaped);

(5) Subject to the same emission standards. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

(b) Where vehicles are of a type which cannot be divided into test groups based on the criteria listed above (such as non-cylinder engines), the Administrator will establish test groups for those vehicles based upon the features most related to their exhaust emission characteristics.

(c) Manufacturers may further divide groups determined under paragraph (a) of this section providing the Administrator is notified in advance of any such changes in writing.

(d) Manufacturers may request the Administrator's approval to combine vehicles into a single test group which would normally not be eligible to be in a single test group. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the similar levels of emissions;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient in-use verification program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1828–01 Emission data vehicle selection.

(a) *FTP and SFTP testing.* Within each test group, the vehicle configuration shall be selected which is expected to be worst-case for exhaust emission compliance on candidate in-use vehicles, considering all exhaust emission constituents, all exhaust test procedures, and the potential impact of air conditioning on test results. The selected vehicle will include an air conditioning engine code unless the worst-case vehicle configuration selected is not available with air conditioning. This vehicle configuration will be used as the EDV calibration.

(b) *Evaporative/Refueling testing.* Vehicles of each evaporative/refueling family will be divided into evaporative/refueling emission control systems.

(1) The vehicle configuration expected to exhibit the highest evaporative and/or refueling emission on candidate in-use vehicles shall be selected for each evaporative/refueling family and evaporative refueling emission system combination from among the corresponding vehicles selected for FTP and SFTP testing under paragraph (a) of this section. Separate vehicles may be selected to be tested for evaporative and refueling testing.

(2) Each test group must be represented by both evaporative and refueling testing (provided that the refueling standards are applicable) before it may be certified. That required testing may have been conducted on a vehicle in another test group provided the tested vehicle is a member of the same evaporative/refueling family and evaporative/refueling emission system combination and it was selected for testing in accordance with the provisions of paragraph (b)(1) of this section.

(3) For evaporative/refueling emission testing, the vehicle(s) selected shall be equipped with the worst-case evaporative/refueling emission hardware available on that vehicle considering such items as canister size and material, fuel tank size and material, purge strategy and flow rates, refueling characteristics, and amount of vapor generation.

(c) *Cold CO testing.* For cold temperature CO exhaust emission compliance for each durability group, the vehicle expected to emit the highest CO emissions at 20 degrees F on candidate in-use vehicles shall be selected from the test vehicles selected in accordance with paragraph (a) of this section.

(d) *Certification Short Test testing.* For CST exhaust emission compliance for each durability group, the vehicle expected to emit the highest CST emissions on candidate in-use vehicles shall be selected from the vehicles selected in accordance with paragraph (a) of this section. The manufacturer may elect to submit a compliance statement in lieu of test data under the provisions of § 86.1829–01.

(e) The manufacturer may select, using good engineering judgement, an equivalent or worst-case configuration in lieu of testing the vehicle selected in paragraphs (a) through (d) of this section. Carryover data satisfying the provisions of § 86.1839–01 may also be used in lieu of testing the configuration selected in paragraphs (a) through (d) of this section.

(f) The manufacturer shall use good engineering judgment in making selections of vehicles under this section.

§ 86.1829–01 Durability and emission testing requirements; waivers.

(a) *Durability demonstration.* (1) One durability demonstration is required for each durability group.

(2) The configuration of the DDV is determined according to the provisions of § 86.1822–01.

(3) The DDV shall be tested and accumulate service mileage according to the provisions of §§ 86.1831–01, 86.1823–01, 86.1824–01 and 86.1825–01. Small volume manufacturers and small volume test groups may optionally meet the requirements of § 86.1838–01.

(b) *Emissions demonstration.* (1) *FTP and SFTP Exhaust Testing.* (i) *Testing at low altitude.* One EDV shall be tested in each test group for exhaust emissions using the FTP and SFTP test procedures of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01 of this subpart.

(ii) *Testing at high altitude.* For high-altitude exhaust emission compliance for each test group, the manufacturer shall follow one of the following two procedures:

(A) One EDV shall be tested in each test group for exhaust emissions using the FTP test procedures of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01; or

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles and light-duty trucks comply with the emission standards at high altitude.

(iii) *Data submittal waivers.* (A) In lieu of testing a methanol-fueled diesel-cycle light truck for particulate emissions a manufacturer may provide a statement in its application for certification that such light trucks comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(B) In lieu of testing a gasoline-fueled or methanol-fueled Otto-cycle certification light-duty vehicle or light-duty trucks for particulate emissions a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(C) A manufacturer may petition the Administrator for a waiver of the requirement to submit total hydrocarbon emission data. If the waiver is granted, then in lieu of testing a certification light-duty vehicle or light-duty truck for total hydrocarbon emissions the manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(D) A manufacturer may petition the Administrator to waive the requirement to measure particulate emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles.

(2) *Evaporative/Refueling testing.* Vehicles of each evaporative/refueling family will be divided into evaporative/refueling emission control systems. Applicability of the refueling test requirements of this paragraph shall be determined in accordance with the applicability of the refueling loss standards under the provisions of § 86.1810.

(i) *Testing at low altitude.* One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination shall be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01. The EDV must also be tested for exhaust emission compliance using the FTP and SFTP procedures of subpart B of this part.

(ii) *Testing at high altitude.* For high-altitude evaporative and/or refueling emission compliance for each evaporative/refueling family, the manufacturer shall follow one of the following two procedures:

(A) One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination shall be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1824–01. The EDV must also be tested for exhaust emissions using the FTP procedures of subpart B of this part while operated at high altitude; or

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles and light-duty trucks comply with the emission standards at high altitude.

(3) *Cold CO Testing.* One EDV in each durability group shall be tested for cold temperature CO exhaust emission compliance in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator. The selection of which EDV and test group within the durability group will be tested for cold CO compliance will be determined under the provisions of § 86.1828–01(c).

(4) *Certification Short Test testing.* (i) To determine CST emission compliance for each durability group, the manufacturer shall follow one of the following two procedures:

(A) One EDV in each durability group shall be tested in accordance with the CST procedures set forth in subpart O of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01(d). The EDV must also be tested for exhaust emissions using the FTP and SFTP procedures of subpart B of this part; or

(B) In lieu of testing vehicles according to the provisions of § 86.1829–01(b)(4)(i)(A), a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such CST testing as the manufacturer deems appropriate, all light-duty vehicles and light-duty trucks comply with the CST emission standards.

(ii) For light-duty vehicles and light-duty trucks, a manufacturer with a test group that cannot be appropriately tested on all Certification Short Test

emission test procedures described in § 86.1439 may request an exemption, as described in § 86.1427(d), from the inappropriate test(s) for purposes of demonstrating compliance with the Certification Short Test as described in subpart O of this part.

(iii) For light-duty vehicles and light-duty trucks, a manufacturer with a test group that can be appropriately tested on none of the Certification Short Test emission test procedures described in § 86.1439 may request an alternative procedure as described in § 86.1427(d).

(5) *Idle CO Testing.* To determine idle CO emission compliance for light-duty trucks, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this part; or

(ii) In lieu of testing light trucks for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks comply with the idle CO emission standards.

(c) *Running change testing.* Running change testing shall be conducted as required under the provisions of § 86.1842–01.

§ 86.1830–01 Acceptance of vehicles for emission testing.

(a) *General test vehicle requirements.* (1) All test vehicles shall be tested in the proper configurations as specified in §§ 86.1822–01, 86.1828–01, or 86.1842–01, as applicable for the type of test conducted.

(2) Components affecting emissions which are used to build test vehicles shall either be randomly selected production parts or parts verified to be in the middle 50 percent of the tolerance range. The manufacturer will determine which components affect emissions using good engineering judgment.

(3) Test vehicles must have air conditioning installed and operational if that configuration is available with air conditioning. Optional equipment must be installed or represented on test vehicles according to the provisions of § 86.1832–01.

(4) Test vehicles must receive proper scheduled maintenance as established by the manufacturer according to the provisions of § 86.1834–01(b) or (c). Unscheduled maintenance must be approved under the provisions of § 86.1834–01(d).

(5) Vehicle mileage shall be accumulated in accordance with § 86.1831–01.

(6) The road load forces and equivalent test weight used during testing will be determined according to the provisions of § 86.129–00.

(7) Test vehicles shall have the appropriate emission testing hardware installed (e.g., exhaust pipe testing flange, fuel tank drain, access ports to evaporative canisters, and fuel tank heat blanket) and shall have tires with appropriate tire wear.

(b) *Special provisions for durability data vehicles.* (1) For DDV's, the mileage at all test points shall be within 250 miles of the scheduled mileage point as required under § 86.1823–01(b). Manufacturers may exceed the 250 mile upper limit if there are logistical reasons for the deviation and the manufacturer determines that the deviation will not affect the representativeness of the durability demonstration.

(2) For DDV's, except as allowed under the bench testing provisions of § 86.1823–01, all emission-related hardware and software must be installed and operational during all mileage accumulation after the 5000-mile test point.

(3) DDV's may be reconfigured before the 5000-mile test point providing that the representativeness of the emission results will not be affected. Manufacturers shall use good engineering judgment in making such determinations.

(c) *Special provisions for emission data vehicles.* (1) All EDV's shall have at least the minimum number of miles accumulated to achieve stabilized emission results according to the provisions of § 86.1831–01(c)(4).

(2) Within a durability group, the manufacturer may alter any emission data vehicle (or other vehicles such as current or previous model year emission data vehicles, running change vehicles, fuel economy data vehicles, and development vehicles) in lieu of building a new test vehicle providing that the modification will not impact the representativeness of the vehicle's test results. Manufacturers shall use good engineering judgment in making such determinations. Development vehicles which were used to develop the calibration selected for emission data testing may not be used as the EDV for that configuration. Vehicles from outside the durability group may be altered with advance approval of the Administrator.

(3) Components used to reconfigure EDV's under the provisions of paragraph (c)(2) of this section shall be appropriately aged if necessary to achieve representative emission results. Manufacturers shall determine the need for component aging and the type and amount of aging required using good engineering judgment.

(4) Bench-aged hardware may be installed on an EDV for emission testing as a method of determining certification levels (projected emission levels at full or intermediate useful life) using bench aging procedures approved under the provisions of § 86.1823–01.

§ 86.1831–01 Mileage accumulation requirements for test vehicles.

(a) *Durability Data Vehicles.* (1) The manufacturer shall accumulate mileage on DDV's using the procedures which have been approved under the provisions of § 86.1823–01(a)(1).

(2) All tests required by this subpart on durability data vehicles shall be conducted within 250 miles of each of the nominal test point mileage. This +/–250 mile test point mileage tolerance may be modified with the advance approval of the Administrator if the basis for the written request is to prevent an interruption of durability mileage accumulation due to test scheduling conflicts for weekends, holidays, or other similar circumstances.

(b) *Emission data vehicles and running change vehicles.* (1) The standard method of service accumulation for emission data vehicles and running change vehicles shall be mileage accumulation using the Durability Driving Schedule as specified in Appendix IV to this part.

(2) The manufacturer may use an alternative mileage accumulation method providing the form and extent of the service accumulation represents normal driving patterns for that vehicle, the method is consistent with good engineering judgment, and the method is described in the application for certification.

(3) Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(c) The manufacturer shall determine the mileage at which the emission control system and engine combination is stabilized for emission-data testing. The manufacturer shall provide to the Administrator if requested, a record of the analysis used in making this determination. The manufacturer may

elect to accumulate 2,000 miles (3,219 kilometers) or more on each test vehicle without making a determination. The manufacturer must accumulate a minimum of 1,000 miles (1,608 kilometers) on each emission data vehicle.

(d) All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator upon request.

§ 86.1832–01 Optional equipment and air conditioning for test vehicles.

For test vehicles selected under §§ 86.1822–01 and 86.1828–01:

(a)(1) Where it is expected that more than 33 percent of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item must be included in the curb weight computation for each vehicle available with that item in that car line, within that test group.

(2) Where it is expected that 33 percent or less of the car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that car line, within that test group, unless that item is standard equipment on the vehicle.

(3) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(4) Optional equipment weighing less than three pounds per item need not be considered.

(b)(1) Where it is expected that more than 33 percent of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items must actually be installed (unless excluded under paragraph (b)(2) of this section) on all emission data and durability data vehicles of that car line, within that test group, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions include, but are not limited to: air conditioning, power steering, and power brakes.

(2) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (b)(1) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(3) The weight of the options must be included in the design curb weight and must also be represented in the weight of the test vehicles.

(4) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and be made available to the Agency upon request by the Administrator within 15 business days.

(c) Except for air conditioning, where it is expected that 33 percent or less of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item may not be installed on any emission data vehicle or durability data vehicle of that car line within that test group, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(d) Air conditioning must be installed and operational on any emission data vehicle of any vehicle configuration that is projected to be available with air conditioning regardless of the rate of installation of air conditioning within the car line. Paragraphs (a) through (c) of this section will be used to determine whether the weight of the air conditioner will be included in the equivalent test weight calculations for emission testing.

§ 86.1833–01 Adjustable parameters.

(a) At the time that emission data vehicles are selected for the test fleet, a determination shall be made of those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter. The manufacturer shall use good engineering judgment in making such determinations and shall notify the Administrator of its determinations prior to emission data vehicle testing for the affected test groups (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(1) Determining parameters subject to adjustment.

(i) The following parameters may be subject to adjustment: the idle fuel-air mixture parameter on Otto-cycle vehicles; the choke valve action parameter(s) on carbureted, Otto-cycle vehicles (or engines); or any parameter on any vehicle (Otto-cycle or diesel) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

(ii) Any other parameters on any vehicle or engine which are physically capable of being adjusted and which may significantly affect emissions may be determined to be subject to adjustment. However, the Administrator may do so only if he/she has previously notified the manufacturer that he/she might do so and has found, at the time he/she gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment, the following shall be taken into consideration: the likelihood that, for each of the parameters listed in paragraphs (e)(1) (i) and (ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (or engines). In determining likelihood, such factors may be considered as information contained in the preliminary application, surveillance information from similar in-use vehicles, the difficulty and cost of gaining access to an adjustment, damage to the vehicle if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle performance characteristics including emission characteristics.

(2)(i) A parameter may be determined to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 dollars) or less;

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws;

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of

a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials);

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) A physical limit or stop shall be determined to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned, or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 dollars);

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment;

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (a)(2)(i) and (ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (a)(2)(i) or (ii) of this section, the following shall be considered: the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, such factors may be considered as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles; the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle performance characteristics other than emission characteristics.

(v) In the case of electronic components on circuit boards (such as onboard computers) the board is covered with a epoxy resin which inhibits the access to components on the board (commonly referred to as potting).

(3) Two physically adjustable ranges shall be determined for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the following may be included within the physically adjustable range applicable to testing under this subpart: all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the application for certification or other information; or

(B) In the case of other parameters, all settings within physical limits or stops determined to be adequate restraints on adjustability shall be included within this range. The production tolerances on the location of these limits or stops may be included when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, only the actual settings to which the parameter is adjusted during production shall be included within the physically adjustable range applicable to testing under subparts G or K (Selective Enforcement Audit and Production Compliance Audit) of this part; or

(B) In the case of other parameters, all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle, shall be included within the range.

(b) In lieu of making the determinations required in paragraph (a) of this section, the manufacturer may request a determination be made by the Administrator prior to emission testing. In that case, all the information discussed in paragraph (a) of this section shall be provided to the Administrator. The Administrator will respond within 90 days (excluding the elapsed time during which additional information requested by the Administrator is being gathered by the manufacturer) following the receipt of the request for determination.

(c) If the Administrator determines that the decisions made by the manufacturer under the provisions of paragraph (a) of this section were not made using good engineering judgment, the Administrator will overrule the manufacturers' decisions and conduct testing for Certification, Selective Enforcement Audit and/or Production Compliance Audit purposes by adjusting parameters according to his/her determination of those vehicle or engine parameters subject to adjustment, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter. Furthermore, the Administrator may reject testing performed by the manufacturer which failed to follow his/her determinations.

(d) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (b) or (c) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1834–01 Allowable maintenance.

(a) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors, as appropriate, is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and under § 86.1808–01.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under § 86.1808–01. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to

assure in-use compliance with the emission standards. Manufacturers shall determine the technological need for maintenance using good engineering judgment. The Administrator has determined that emission-related maintenance at shorter intervals than those outlined in paragraphs (b)(3) and (4) of this section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (e.g., longer intervals) than that listed in paragraphs (b)(3) and (4) of this section is also not technologically necessary.

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (iv) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(6) of this section.

(i) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs shall occur at 30,000 miles of use and at 30,000-mile intervals thereafter.

(ii) The adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(iii) The adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(iv) The adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) EGR System including all related filters and control valves.

(J) Mechanical fillpipe seals.

(4) For diesel-cycle light-duty vehicles and light-duty trucks, emission-related maintenance in addition to, or at shorter intervals than the following will not be accepted as technologically necessary, except as provided in paragraph (b)(6) of this section:

(i) The adjustment, cleaning, repair, or replacement of the positive crankcase ventilation valve shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter.

(ii) The adjustment, cleaning, repair, or replacement shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter of the following items:

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(E) Exhaust gas recirculation system including all related filters and control valves.

(F) Catalytic converter.

(G) Superchargers.

(5) Critical emission-related components.

(i) The following components are defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters and control valves).

(E) Positive crankcase ventilation valve.

(F) Evaporative and refueling emission control system components (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (b)(5)(ii) (A) through (F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in use.

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message ''maintenance needed'' or ''check engine,'' or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(5)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one test group, the sample will be sales weighted to ensure that it is representative of all the groups in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.1808–01.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in use.

(iii) Visible signal systems used under paragraph (b)(5)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(6) Changes to scheduled maintenance. (i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine

additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcement in a **Federal Register** Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (i.e., emission-related or non-emission-related, critical or non-critical) of the subject maintenance and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission-related. For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(5) of this section. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items, along with their identification as critical or non-critical, and establishment of technologically necessary maintenance intervals, will be announced in the **Federal Register**.

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(6) of this section. The request shall be in writing and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, adjustment of air pump drive belt tension, lubrication of the exhaust manifold heat control valve, lubrication of carburetor choke linkage, re-torquing carburetor mounting bolts, etc.) may be performed on durability data vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not at the intervals recommended for severe service).

(d) Unscheduled maintenance on light-duty durability data vehicles.

(1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraphs (d)(2) and (3) of this section, only under the following provisions defined in paragraphs (d)(1)(i) through (iii) of this section:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

(ii) Readjustment of an Otto-cycle vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed (using good engineering judgment) only in the following circumstances:

(i) The part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in use and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement.

(ii) The need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption, or excessive power loss. The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle/engine malfunction (e.g., misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(iii) The OBD system of a durability data vehicle representing an test group certifying fully to the Federal OBD requirements as specified in § 86.1806–01(a) through (h) has specifically detected the problem and has illuminated the malfunction indicator light.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem;

(B) The malfunction will not occur in production vehicles or engines in use; and

(C) The deterioration factor generated by the durability data vehicle or engine will remain unaffected by the malfunction or by the corrective action (e.g., the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emission test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability data vehicle or engine.

(4) If a part failure or system malfunction occurrence and/or repair has rendered the vehicle/engine

unrepresentative of vehicles in use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) Maintenance on emission data vehicles and engines. (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components; or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission data vehicles; or

(3) Unless specifically authorized by the Administrator.

(g) Complete emission tests (see §§ 86.106–96 through 86.145–82) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and in a representative condition. Required air conditioning system maintenance is performed as unscheduled maintenance and does not require the Administrator's approval.

§ 86.1835–01 Confirmatory certification testing.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting emissions tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(i) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data vehicle which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.1833–01(a)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833–01(a)(3), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.1829–01(b). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(ii) For those vehicles parameters which the Administrator has not determined to be subject to adjustment during testing in accordance with § 86.1833–01(a)(1), the vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.1807–01) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission data vehicle.

(2) If the Administrator determines that the test data developed on an emission data vehicle under paragraph (a)(1) of this section would cause that vehicle to fail under the provisions of § 86.1841–01, then the following procedure shall be observed:

(i) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.1833-01(a)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833–01(a)(3). Other maintenance or repairs may be performed in accordance with § 86.1834–01. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(ii) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(3) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(1) of this section to enable the Administrator to

determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (a)(2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(4) Retesting for fuel economy reasons may be conducted under the provisions of 40 CFR 600.008–01.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrators determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the test as measured in accordance with the procedures in 40 CFR Part 600 is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator for that model year; or

(v) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is a potential fuel economy leader for a class of vehicles based on Administrator provided cut points for that model year.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) For use in the fuel economy program described in 40 CFR part 600, the manufacturer may, in lieu of conducting a retest, accept as official the lower of the original and confirmatory test fuel economy results.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). In lieu of conducting a second retest, the manufacturer may accept as official (for use in the fuel economy program) the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results.

(c) *Official test determination.* (1) Whenever the Administrator or the manufacturer conducts a confirmatory test segment on a test vehicle, the results of that test segment, unless subsequently invalidated by the Administrator, shall comprise the official data for that test segment for the vehicle at the prescribed test point and the manufacturer's original test data for that test segment for that prescribed test point shall not be used in determining compliance with emission standards.

(i) If the Administrator or the manufacturer conducts more than one passing, valid, confirmatory test, the results from the first passing, valid confirmatory test shall be considered official and used in determining compliance with emission standards.

(ii) Official test results for fuel economy purposes are determined in accordance with the provisions of 40 CFR 600.008–01.

(iii) The Administrator may stop a test after any evaporative test segment and use as official data any valid results obtained up to that point in the test, as described in subpart B of this part.

(2) Whenever the Administrator or the manufacturer does not conduct a confirmatory test on a test vehicle at a test point, the manufacturer's original test data will be accepted as the official data for that point.

(i) If the Administrator makes a determination based on testing under paragraph (a) of this section (or other appropriate correlation test data), that there is a lack of correlation between the manufacturer's test equipment or procedures and the test equipment or procedures used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer.

(ii) If the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this subpart, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii) If the manufacturer conducts more than one test on an emission data vehicle in the same configuration (excluding confirmatory tests run under paragraph (b) of this section), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(d) Upon request of the manufacturer, the Administrator may issue a conditional certificate of conformity for a test group which has not completed the Administrator testing required under paragraph (b) of this section. Such a certificate will be issued based upon the condition that the confirmatory testing be completed in an expedited manner and that the results of the testing be in compliance with all standards and procedures.

(1) If, based on this testing or any other information, the Administrator later determines that the vehicles included in this test group do not meet the applicable standards, the Administrator will notify the manufacturer that the certificate is suspended. The certificate may be suspended in whole or in part as determined by the Administrator. Upon such a notification, the manufacturer must immediately cease the introduction of the affected vehicles into commerce. The manufacturer may request a hearing to appeal the Administrators decision using the provisions of § 86.1853–01.

(2) Production of vehicles by a manufacturer under the terms of this paragraph (d) will be deemed to be a consent to recall all vehicles in the test group which the Administrator determines do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

§ 86.1836–01 Manufacturer-supplied production vehicles for testing.

Any manufacturer obtaining certification under this subpart shall supply to the Administrator, upon request, a reasonable number of production vehicles selected by the Administrator which are representative of the engines, emission control

systems, fuel systems, and transmission offered and typical of production models available for sale under the certificate. These vehicles shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 86.1837–01 Rounding of emission measurements.

Unless otherwise specified, the results of all emission tests shall be rounded to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to one additional significant figure, in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1).

§ 86.1838–01 Small volume manufacturer certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b) *Eligibility requirements.* (1) *Small volume manufacturers.* (i) The optional small-volume manufacturers certification procedures apply to light-duty vehicles and light-duty trucks, produced by manufacturers with U.S. sales, including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (light-duty vehicles, light-duty trucks, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated U.S. sales of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) *Small Volume Test Groups.* (i) If the aggregated U.S. sales of the manufacturer, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

(ii) If there are no additional manufacturers in an aggregated relationship meeting the provisions of paragraph (b)(3) of this section, then the manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(iii) If there is an aggregated relationship with another manufacturer which satisfies the provisions of paragraph (b)(3) of this section, then the following provisions shall apply:

(A) If none of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then each manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(B) If any of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then the limit of 14,999 units must be shared among the manufacturers in such a relationship. In total for all the manufacturers involved in such a relationship, aggregated sales (including heavy-duty engines) of up to 14,999 units may be certified using the small volume provisions of paragraph (c) of this section. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(iv) In the case of a joint venture arrangement (50/50 ownership) between two manufacturers, each manufacturer retains its eligibility for 14,999 units under the small-volume test group certification procedures, but the joint venture must draw its maximum 14,999 units from the units allocated to its parent manufacturers. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(3) *Sales Aggregation for Related Manufacturers.* The projected or actual sales from different firms shall be aggregated in the following situations:

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part owned by another;

(ii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

(c) Small-volume manufacturers and/or small volume test groups shall demonstrate compliance with the all applicable sections of this subpart except as provided in paragraphs (c)(1) and (2) of this section. Small volume manufacturers and/or test groups may optionally meet the following requirements:

(1) *Durability demonstration.* Use the provisions of § 86.1826–01 rather than the requirements of §§ 86.1823–01, 86.1824–01, and/or 86.1825–01.

(2) *In-Use Verification testing.* See § 86.1845–01 for applicability of in-use verification testing to small volume manufacturers and small volume test groups except as noted in this paragraph (c)(2).

(i) Small volume in-use verification test vehicles may be procured from customers or may be owned by, or under the control of the manufacturer, provided that the vehicle has accumulated mileage in typical operation on public streets and has received typical maintenance.

(ii) In lieu of procuring small volume in-use verification test vehicles that have a minimum odometer reading of 50,000 miles, a manufacturer may demonstrate to the satisfaction of the Agency that, based on owner survey data, the average mileage accumulated after 4 years for a given test group is less than 50,000 miles. The Agency may approve a lower minimum odometer reading based on such data.

(iii) The provision of § 86.1845–01(c)(2), which requires one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75% of useful life, does not apply.

(iv) Manufacturers intending to use the provisions of paragraphs (c)(2)(i) or (ii) of this section shall submit to the Agency, prior to the certification of the subject vehicles, a plan detailing how these provisions will be met.

§ 86.1839–01 Carryover of certification data.

(a) In lieu of testing an emission-data or durability vehicle selected under § 86.1822–01, § 86.1828–01, or § 86.1829–01, and submitting data therefrom, a manufacturer may submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable, on a similar vehicle for which certification has been obtained or for which all applicable data

required under § 86.1845–01 has previously been submitted. To be eligible for this provision, the manufacturer must use good engineering judgment and meet the following criteria:

(1) In the case of durability data, the manufacturer must determine that the previously generated durability data represent a worst case or equivalent rate of deterioration for all applicable emission constituents compared to the configuration selected for durability demonstration.

(i) Prior to certification, the Administrator may require the manufacturer to provide data showing that the distribution of catalyst temperatures of the selected durability configuration is effectively equivalent or lower than the distribution of catalyst temperatures of the vehicle configuration which is the source of the previously generated data.

(ii) For the 2001, 2002, and 2003 model years only, paragraph (a)(1) of this section does not apply to the use of exhaust emission deterioration factors meeting the requirements of § 86.1823–01(c)(2).

(2) In the case of emission data, the manufacturer must determine that the previously generated emissions data represent a worst case or equivalent level of emissions for all applicable emission constituents compared to the configuration selected for emission compliance demonstration.

(b) In lieu of using newly aged hardware on an EDV as allowed under the provisions of § 86.1823–01(a)(3)(ii), a manufacturer may use similar hardware aged for an EDV previously submitted, provided that the manufacturer determines that the previously aged hardware represents a worst case or equivalent rate of deterioration for all applicable emission constituents for durability demonstration.

§ 86.1840–01 Special test procedures.

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle or light-duty truck which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.

(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle or light-duty truck is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) Certification levels of a test vehicle will be calculated for each emission constituent applicable to the test group for both full and intermediate useful life as appropriate.

(1) If the durability demonstration procedure approved by the Administrator under the provisions of §§ 86.1823–01, 86.1824–01, or 86.1825–01 requires a DF to be calculated, the DF shall be applied to the official test results determined in § 86.1835–01(c) for each regulated emission constituent and for full and intermediate useful life, as appropriate, using the following procedures:

(i) For additive DF's, the DF will be added to the emission result. The sum will be rounded to the same level of precision as the standard for the constituent at full and/or intermediate useful life, as appropriate. This rounded sum is the certification level for that emission constituent and for that useful life mileage.

(ii) For multiplicative DFs, the DF will be multiplied by the emission result for each regulated constituent. The product will be rounded to the same level of precision as the standard for the constituent at full and intermediate useful life, as appropriate. This rounded product is the certification level for that emission constituent and for that useful life mileage.

(iii) For the SFTP composite standard of ($NMHC+NO_X$), the measured results of NMHC and NO_X must each be adjusted by their corresponding deterioration factors before the composite ($NMHC+NO_X$) certification level is calculated.

(2) If the durability demonstration procedure approved by the Administrator under the provisions of § 86.1823–01, § 86.1824–01, or § 86.1825–01, as applicable, requires testing of the EDV with aged emission components, the official results of that testing determined under the provisions of § 86.1835–01(c) shall be rounded to the same level of precision as the standard for each regulated constituent at full and intermediate useful life, as appropriate. This rounded emission value is the certification level for that emission constituent at that useful life mileage.

(3) If the durability demonstration procedure approved by the Administrator under the provisions of § 86.1823–01 requires neither a DF calculation nor EDV testing with aged hardware, the certification levels shall be calculated in accordance with the provisions approved under § 86.1823–01(a)(3).

(4) The rounding required in paragraph (a) of this section shall be conducted in accordance with the provisions of § 86.1837–01.

(b) To be considered in compliance with the standards for the purposes of certification, the certification levels for the test vehicle calculated in paragraph (a) of this section shall be less than or equal to the standards for all emission constituents to which the test group is subject, at both full and intermediate useful life as appropriate for that test group.

(c) Every test vehicle of a test group must comply with all applicable exhaust emission standards before that test group may be certified.

(d) Every test vehicle of an evaporative/refueling family must comply with all applicable evaporative and/or refueling emission standards before that family may be certified.

§ 86.1842–01 Addition of a vehicle after certification; and changes to a vehicle covered by certification.

(a) *Addition of a car line after certification.* (1) If a manufacturer proposes to add to its product line a new car line of the same test group as vehicles previously certified but which was not described in the application for certification when the test vehicle(s) representing other vehicles of that combination was certified, it shall notify the Administrator. This notification shall include a full description of the vehicle to be added.

(2) The manufacturer shall perform such tests on the test vehicle(s) representing the vehicle to be added which would have been required if the vehicle had been included in the original application for certification.

(3) If, after a review of the test reports and data submitted by the manufacturer, and data derived from any testing conducted under § 86.1835–01, the Administrator determines that the test vehicle(s) or test engine(s) meets all applicable standards, the appropriate certificate will be amended accordingly. If the Administrator determines that the test vehicle(s) does not meet applicable standards, she/he will proceed under § 86.1850–01.

(b) *Changes to the configuration of vehicles covered by a Certificate of Conformity.* (1) A manufacturer will notify the Administrator concurrently with (or in advance of) any change or addition in production vehicles which

creates a new vehicle configuration within the car lines covered in a certified test group, giving a full description of the change. Such a change is referred to as a running change. Upon notification, the manufacturer may begin production of the running change if the manufacturer determines that following the change all affected vehicles will still meet the applicable emission standards.

(i) Such notification shall include a full description of the addition or change and any supporting documentation the manufacturer may desire to include to support the manufacturer's determination in accordance with § 86.1844-01.

(ii) The manufacturer's determination that the addition or change does not cause noncompliance shall be based on an engineering evaluation of the addition or change and/or testing.

(2) The Administrator may require that additional emission testing be performed to support the manufacturer's determination submitted in paragraph (b)(1) of this section. If additional testing is required the Administrator shall proceed in accordance with paragraph (a)(3) of this section. Additional test data, if requested, must be provided within 30 days of the request or the manufacturer must rescind the addition or change immediately. The Administrator may grant additional time to complete testing. If based on this additional testing or any other information, the Administrator determines that the vehicles affected by the addition or change do not meet the applicable standards the Administrator will notify the manufacturer to rescind the addition or change immediately upon receipt of the notification.

(c) Election to produce vehicles under this section will be deemed to be a consent to recall all vehicles which the Administrator determines under paragraph (a) or (b) of this section do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

§ 86.1843–01 General information requirements.

(a) A manufacturer must submit a separate Application for Certification (Application) for each durability group in a format approved by the Administrator and in multiple copies as designated by the Administrator. Any information within the Application which is unique to a specific test group must be submitted for each test group.

(b) Any manufacturer that fails to comply with any information requirements of §§ 86.1843–01 and 86.1844–01 may be subject to the following provisions:

(1) The Application (Part 1 and Part 2) and any additional information as designated by the Administrator shall be submitted for all durability groups prior to certification for subsequent model years, until otherwise notified by the Administrator. The Application shall be updated concurrently with every running change.

(2) Provisions of § 86.1850–01 may be imposed.

(3) Civil penalties and remedial action as applicable under the Clean Air Act may be imposed.

(c) *Part 1 of the Application.* Part 1, which shall include the items listed in § 86.1844–01(d), must be submitted to the Administrator before a certificate of conformity will be issued.

(d) *Part 2 of the Application.* Part 2, which shall include the items listed in § 86.1844–01(e), must be submitted to the Administrator by January 1st of the applicable model year. If a test group is certified less than 60 days prior to January 1st of the applicable model year, Part 2 must be submitted to the Administrator within 90 days of the effective date on the applicable certificate of conformity.

(e) *Running change submissions.* Each running change notification, as required under § 86.1842–01, must include the information listed in § 86.1844–01(f) and shall be submitted to the Administrator concurrently with, or in advance of, the implementation of any change incorporated onto production vehicles.

(f) *Updates to the Application for Certification.* (1) The manufacturer must submit an update to the Part 1 Application by January 1st of the applicable model year to incorporate any running changes and/or corrections which occurred after certification. If a test group is certified less than 60 days prior to January 1st of the applicable model year, this update may be submitted to the Administrator within 90 days of the effective date on the applicable certificate of conformity.

(2) The manufacturer must submit a final update to Part 1 and Part 2 of the Application by January 1st of the subsequent model year to incorporate any applicable running changes or corrections which occurred between January 1st of the applicable model year and the end of the model year. A manufacturer may request the Administrator to grant an extension (of no more than 90 days) for submittal of the final update. The request must clearly indicate the circumstances necessitating the extension.

(3) The manufacturer may not use updates to its application to correct a misbuild situation with respect to vehicles already introduced into commerce.

(g) *Information to be submitted upon request.* Upon written request by the Administrator, a manufacturer shall submit any information as described in § 86.1844–01 within 15 business days. A manufacturer may request the Administrator to grant an extension. The request must clearly indicate the circumstances necessitating the extension.

(h) *In-use information requirements.* All information requirements of the in-use verification and confirmatory programs of §§ 86.1845–01 and 86.1846–01 must be met by the due dates listed in § 86.1847–01.

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

(a) All information listed in this section must be submitted to the Agency according to the requirements specified in § 86.1843–01.

(b) Nothing in this section limits the Administrator's discretion to require the manufacturer to submit additional records not specifically required by this section.

(c) Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. All records, other than routine emission test records, required to be produced by the manufacturer under this title shall be made available upon written request by the Administrator for a period of eight years after issuance of all certificates of conformity to which they relate.

(d) *Part 1 Application.* Part 1 must contain the following items:

(1) Correspondence and communication information, such as names, mailing addresses, phone and fax numbers, and e-mail addresses of all manufacturer representatives authorized to be in contact with EPA compliance staff. The address where official documents, such as certificates of conformity, are to be mailed must be clearly identified. At least one U.S. contact must be provided.

(2) A description of the durability group in accordance with the criteria listed in § 86.1820–01, or as otherwise used to group a product line.

(3) A description of applicable evaporative/refueling families in accordance with the criteria listed in § 86.1821–01, or as otherwise used to group a product line.

(4) A description of the test procedures used to establish durability and exhaust and evaporative/refueling emission deterioration factors as required to be determined and supplied in §§ 86.1823–01, 86.1824–01 and 86.1825–01 when applicable.

(5) A description of each test group in accordance with the criteria listed in § 86.1827–01 or as otherwise used to group a product line.

(6) Identification and description of all vehicles for which testing is required by §§ 86.1822–01 and 86.1828–01 to obtain a certificate of conformity.

(7) A comprehensive list of all test results, including official certification levels, and the applicable intermediate and full useful life emission standards to which the test group is to be certified as required in § 86.1829–01.

(8) A statement that all applicable vehicles will conform with the emission standards for which emission data is not being provided, as allowed under § 86.1829–01. The statement shall clearly identify the standards for which emission testing was not completed.

(9) Information which describes each emission control diagnostic system required by § 86.1806–01 including:

(i) A description of the functional operation characteristics of the diagnostic system;

(ii) The general method of detecting malfunctions for each emission-related powertrain component;

(iii) Any deficiencies, including resolution plans and schedules.

(10) A description of all flexible or dedicated alternate fuel vehicles including, but not limited to, the fuel and/or percentage of alternate fuel for all such vehicles.

(11) A list of all auxiliary emission control devices (AECD) installed on any applicable vehicles, including a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD which results in a reduction in effectiveness of the emission control system, and rationale for why the AECD is not a defeat device as defined under § 86.1809–01.

(12) Identification and description of all vehicles covered by each certificate of conformity to be produced and sold within the U.S. The description must be sufficient to identify whether any given in-use vehicle is, or is not, covered by a given certificate of conformity, the test group and the evaporative/refueling family to which it belongs and the standards that are applicable to it, by matching readily observable vehicle characteristics and information given in the emission control information label (and other permanently attached labels) to indicators in the Part 1 Application. In addition, the description must be sufficient to determine for each vehicle covered by the certificate, all appropriate test parameters and any special test procedures necessary to conduct an official certification exhaust or evaporative emission test as was required by this subpart to demonstrate compliance with applicable emission standards. The description shall include, but is not limited to, information such as model name, vehicle classification (LDV or LDT), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. The Part 1 may include ranges for test parameters in lieu of actual values.

(13) Projected U.S. vehicle sales volumes for each test group and evaporative/refueling family combination organized in such a way to determine projected compliance with any applicable implementation schedules or minimum sales requirements as specified in § 86.1810 or as otherwise required by this chapter.

(14) A request for a certificate of conformity for each test group after all required testing has been completed. The request must be signed by an authorized manufacturer representative and include a statement that the test group complies with all applicable regulations contained within this chapter.

(e) *Part 2 Application.* Part 2 must contain the following items:

(1) A list of part numbers of all emission-related components and AECDs for each emission control system, including those found on actual components. The part numbers shall be organized by engine code or other similar classification scheme.

(2) Basic calibration information, organized by engine code (or other similar classification scheme), for the major components of the fuel system, EGR system, ignition system, oxygen sensor(s) and thermostat. Examples of major components and associated calibration information include, but are not limited to; fuel pump and fuel pump flow rate, fuel pressure regulator and regulated fuel pressure, EGR valve and EGR exhaust gas flow rate at specified vacuum levels, EGR vacuum regulator and regulated vacuum, EGR orifice and orifice diameter, basic engine timing, timing RPM, idle rpm, spark plug gap, oxygen sensor output (mV), and thermostat opening temperature.

(3) Identification and description of all vehicles covered by each certificate of conformity to be produced and sold within the U.S. The description must be sufficient to identify whether any given in-use vehicle is, or is not, covered by a given certificate of conformity, the test group and the evaporative/refueling family to which it belongs and the standards that are applicable to it, by matching readily observable vehicle characteristics and information given in the emission control information label (and other permanently attached labels) to indicators in the Part 1 Application. In addition, the description must be sufficient to determine for each vehicle covered by the certificate, all appropriate test parameters and any special test procedures necessary to conduct an official certification exhaust or evaporative emission test as was required by this subpart to demonstrate compliance with applicable emission standards. The description shall include, but is not limited to, information such as model name, vehicle classification (LDV or LDT), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. Actual values must be provided for all parameters.

(4) Final U.S. vehicle sales volumes for each test group and evaporative/refueling family combination organized in such a way to verify compliance with any applicable implementation schedules. Final sales are not required until the final update to the Part 2 Application at the end of the model year.

(i) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales. The petition must establish that production volume is functionally equivalent to sales volume.

(ii) The U.S. sales volume shall be based on the location of the point of sale to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(5) Copies of all service manuals, service bulletins and instructions regarding the use, repair, adjustment,

maintenance, or testing of such vehicles relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer (in written or electronic form) for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers. These shall be submitted to the Agency when they are made available to the public and must be updated as appropriate throughout the useful life of the corresponding vehicles.

(f) Running change submissions. A manufacturer shall submit to the Administrator a notification of all running changes as required in accordance with §§ 86.1842–01 and 86.1843–01 at the time each change is incorporated into production. Each running change notification shall include:

(1) A detailed description of the change;

(2) The reason for the change;

(3) The portion of the product line that is affected by the change, including information sufficient to identify whether any given in-use vehicle includes the change;

(4) The effect the change will have on emissions;

(5) Any test data that is determined to be necessary to demonstrate compliance with applicable emission standards; and

(6) A summary report for each test group which provides an overview of all running changes that have been incorporated since certification.

(g) The manufacturer shall provide the following information, or other information as deemed necessary by the Administrator, to the Agency upon written request by the Administrator. This includes any information, or explanations of such information specified in paragraphs (d), (e), and (f) of this section.

(1) A detailed description of the basis for all good engineering judgment decisions that were required to be made by the manufacturer. These include, but are not limited to, placement of vehicles into durability and test groups, the appropriateness of a durability process for future model years, worst-case vehicle selections for durability and emission data purposes, and carry-over or carry-across of emission test data.

(2) The basis used for all compliance statements submitted under this section. Each statement must be supported by the manufacturer using good engineering judgment and should include any emission test data, development test data, or other supporting information deemed necessary. This includes information necessary to demonstrate compliance with any emission standards for which a compliance statement was submitted in lieu of actual emission test data as allowed under § 86.1810.

(3) Detailed technical descriptions of emission-related components and AECDs, including schematic diagrams and hose and wire routings which describe the fundamental operating characteristics of each emission control system.

(4) Detailed calibration specifications for all emission-related components and AECDs.

(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures.

(6) The following information describing any adjustable parameters:

(i) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(ii) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(iii) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(iv) The nominal or recommended setting, and the associated production tolerances, for each such parameter;

(v) The specifications used during all emission testing required by this subpart.

(7) A history of each motor vehicle used for certification testing, including a general description of the buildup of the vehicle and engine. Each history shall begin when any of the selection or buildup activities occur and should include details of the use of the vehicle for development testing. Each history must include a description of the origin and selection process for fuel system components, fuel injection components and emission control system components and specify the steps taken to assure that the certification vehicle will be representative of production vehicles.

(8) A record of all emission tests performed on all durability and emission data vehicles required to be tested by this subpart including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle.

(9) A record and description of any significant events (including extraordinary events such as vehicle accidents or dynamometer runaway) affecting any certification test vehicle, including all maintenance, servicing or tests performed to diagnose engine or emission control system performance. The date and time of each event and an explanation must be included.

(10) For vehicles with non-integrated refueling emission control systems, a description of the drivedown used to purge the refueling canister and a description of the procedures used to determine the number of equivalent UDDS cycles required to purge the refueling canisters, as determined from the fuel economy on the UDDS applicable to the test vehicle of that evaporative/refueling family and emission control system combination required to use a volume of fuel equal to 85% of fuel tank volume and from subpart B of this part.

(11) A description of all procedures, including any special procedures, used to comply with applicable test requirements of this subpart. Any special procedures used to establish durability data or emission deterioration factors required to be determined under §§ 86.1823–01, 86.1824–01 and 86.1825–01 and to conduct emission tests required to be performed on applicable emission data vehicles under § 86.1829–01 according to test procedures contained within this Title must also be included.

(12) A description of any unique procedures required to perform evaporative/refueling emission tests for all vehicles in each evaporative/refueling family and a description of the method used to develop those unique procedures, including canister working capacity, canister bed volume and fuel temperature profile for the running loss test.

(13) A description of the method to be used to decode vehicle identification numbers.

(h) *In-use information requirements.* Manufacturers must submit the information required in § 86.1847–01.

§ 86.1845–01 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer of light-duty vehicles and light-duty trucks shall test, or cause to have tested a specified number of light-duty vehicles and light-duty trucks. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the

term vehicle shall include light-duty vehicles and light-duty trucks.

(b) *Low mileage testing.* [Reserved].

(c) *High-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage: All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75% of useful life. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S01–06 and Table S01–07 of this paragraph (c)(3). After testing the minimum number of vehicles of a specific test group as specified in Table S01–06 and Table S01–07 of this paragraph (c)(3), a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–01(c)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph. In addition to the testing specified in Table S01–06 and Table S02–07 of this paragraph (c)(3), a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group as specified in Table S01–06 or Table S01–07 of this paragraph (c)(3), the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size. Tables S01–06 and S01–07 follow:

TABLE S01–06.—SMALL VOLUME MANUFACTURERS

49 and 50 State total sales [1]	1–5000	5001–14,999
High Mileage	Voluntary	2

[1] Manufacturer's total annual sales.

TABLE S01–07.—LARGE VOLUME MANUFACTURERS

49 and 50 State annual sales [1]	1–5000 [2]	5001–14,999 [2]	1–50,000 [3]	50,001–250,000	>250,000
High Mileage	Voluntary	2	4	5	6

[1] Sales by test group.

[2] Total annual production of groups eligible for testing under small volume sampling plan is capped at a maximum of 14,999 vehicle 49 or 50 state annual sales, or a maximum of 4,500 vehicle California only sales per model year, per large volume manufacturer.

[3] Sampling plan applies to all of a manufacturer's remaining groups in this sales volume category when the maximum annual cap on total sales of small groups eligible for the small volume sampling plan is exceeded.

(4) Initiation and completion of testing. Testing of a test group (or evaporative refueling family) must commence within 4 years of the end of production of the test group (or evaporative/refueling family) and be completed within 5 years of the end of production of the test group (or evaporative/refueling family).

(5) Emission testing. (i) Each test vehicle shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart. The US06 portion of the SFTP is not required to be performed on vehicles certified in accordance with the National LEV provisions of subpart R of this part. One test vehicle from each test group shall receive a Federal Test Procedure at high altitude. The test vehicle tested at high altitude is not required to be one of the same test vehicles tested at low altitude. The test vehicle tested at high altitude is counted when determining the compliance with the requirements shown in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section or the expanded sample size as provided for in this paragraph (c).

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (c)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this Subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing on any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(d) Test vehicle procurement. (1) Vehicles tested under this section shall be procured pursuant to the provisions of this paragraph (d). Vehicles shall be procured from the group of persons who own or lease vehicles registered in the procurement area.

(2) Vehicles shall be procured from persons which own or lease the vehicle, excluding commercial owners/lessees which are owned or controlled by the vehicle manufacturer, using the procedures described in Appendix I to this subpart. See § 86.1838(c)(2)(i) for small volume manufacturer requirements.

(3) Geographical limitations. (i) Test groups certified to 50-state standards: For low altitude testing no more than fifty percent of the test vehicles may be procured from California. The test

vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(ii) Test groups certified to 49 state standards: The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(iii) Vehicles procured for high altitude testing may be procured from any area located above 4000 feet.

(4) Vehicles may be rejected for procurement or testing under this section if they meet one or more of the rejection criteria in Appendix II of this subpart. Vehicles may also be rejected after testing under this section if they meet one or more of the rejection criteria in Appendix II of this subpart. Any vehicle rejected after testing must be replaced in order that the number of test vehicles in the sample comply with the sample size requirements of this section. Any post-test vehicle rejection and replacement procurement and testing must take place within the testing completion requirements of this section.

(e) *Testing facilities, procedures, quality assurance and quality control.* (1) Lab equipment and procedural requirements. The manufacturer shall utilize a test laboratory that is in accordance with the equipment and procedural requirements of subpart B to conduct the testing required by this section.

(2) The manufacturer shall notify the Agency of the name and location of the testing laboratory(s) to be used to conduct testing of vehicles of each model year conducted pursuant to this section. Such notification shall occur at least thirty working days prior to the initiation of testing of the vehicles of that model year.

(3) Correlation. The manufacturer shall document correlation traceable to the Environmental Protection Agency's National Vehicle and Fuel Emission Laboratory for its test laboratory utilized to conduct the testing required by this section.

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer of light-duty vehicles and light-duty trucks shall test, or cause to have tested a specified number of light-duty vehicles and light-duty trucks. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles and light-duty trucks.

(b) *Low-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage. All test vehicles must have a minimum odometer mileage of 10,000 miles.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S04–06 and Table S04–07 of this paragraph (b)(3). After testing the minimum number of vehicles of a specific test group as specified in Table S04–06 or S04–07 of this paragraph (b)(3), a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–04(b)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph. Separate approval will be required to test additional vehicles under paragraph (c) of this section. In addition to the testing specified in Table S04–06 and Table S04–07 of this paragraph (b)(3), a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size. Tables S04–06 and S04–07 follow:

TABLE S04–06.—SMALL VOLUME MANUFACTURERS

49 and 50 State total sales [1]	1–5000	5001–14,999
Low Mileage	Voluntary	0
High Mileage	Voluntary	2

[1] Manufacturer's total annual sales.

TABLE S04–07.—LARGE VOLUME MANUFACTURERS

49 and 50 State annual sales [1]	1–5000 [2]	5001–14,999 [2]	1–50,000 [3]	50,001–250,000	>250,000
Low Mileage	Voluntary	0	2	3	4
High Mileage	Voluntary	2	4	5	6

[1] Sales by test group.
[2] Total annual production of groups eligible for testing under small volume sampling plan is capped at a maximum of 14,999 vehicle 49 or 50 state annual sales, or a maximum of 4,500 vehicle California only sales per model year, per large volume manufacturer.
[3] Sampling plan applies to all of a manufacturer's remaining groups in this sales volume category when the maximum annual cap on total sales of small groups eligible for the small volume sampling plan is exceeded.

(4) Completion of testing. Testing of the vehicles in a test group and evaporative/refueling family must be completed within one year of the end of production of that test group (or evaporative/refueling family) for that model year.

(5) *Emission testing.* (i) Each test vehicle of a test group shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this Subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing of any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(c) *High-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage: All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75% of useful life. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section. After testing the minimum number of vehicles of a specific test group as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section, a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–04(c)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph (c). In addition to the testing specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section, a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group as specified in Table S04–06 or Table S04–07 in paragraph (b)(3) of this section, the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size.

(4) Initiation and completion of testing. Testing of a test group (or evaporative refueling family) must commence within 4 years of the end of production of the test group (or evaporative/refueling family) and be completed within 5 years of the end of production of the test group (or evaporative/refueling family).

(5) Emission testing. (i) Each test vehicle shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart. The US06 portion of the SFTP is not required to be performed on vehicles certified in accordance with the National LEV provisions of subpart R of this part. One test vehicle from each test group shall receive a Federal Test Procedure at high altitude. The test vehicle tested at high altitude is not required to be one of the same test vehicles tested at low altitude. The test vehicle tested at high altitude is counted when determining the compliance with the requirements shown in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section or the expanded sample size as provided for in this paragraph (c).

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing on any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(d) Test vehicle procurement.

(1) Vehicles tested under this section shall be procured pursuant to the provisions of this paragraph (d). Vehicles shall be procured from the group of persons who own or lease vehicles registered in the procurement area.

(2) Vehicles shall be procured from persons which own or lease the vehicle, excluding commercial owners/lessees which are owned or controlled by the vehicle manufacturer, using the procedures described in Appendix I to this subpart. See § 86.1838(c)(2)(i) for small volume manufacturer requirements.

(3) Geographical limitations. (i) Test groups certified to 50-state standards: For low altitude testing no more than fifty percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(ii) Test groups certified to 49 state standards: The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(iii) Vehicles procured for high altitude testing may be procured from any area located above 4000 feet.

(4) Vehicles may be rejected for procurement or testing under this section if they meet one or more of the rejection criteria in Appendix II to this subpart. Vehicles may also be rejected after testing under this section if they meet one or more of the rejection criteria in Appendix II to this subpart. Any vehicle rejected after testing must be replaced in order that the number of test vehicles in the sample comply with the sample size requirements of this section. Any post-test vehicle rejection and replacement procurement and testing must take place within the testing completion requirements of this section.

(e) *Testing facilities, procedures, quality assurance and quality control.* (1) Lab equipment and procedural

requirements. The manufacturer shall utilize a test laboratory that is in accordance with the equipment and procedural requirements of subpart B of this part to conduct the testing required by this section.

(2) The manufacturer shall notify the Agency of the name and location of the testing laboratory(s) to be used to conduct testing of vehicles of each model year conducted pursuant to this section. Such notification shall occur at least thirty working days prior to the initiation of testing of the vehicles of that model year.

(3) Correlation. The manufacturer shall document correlation traceable to the Environmental Protection Agency's National Vehicle and Fuel Emission Laboratory for its test laboratory utilized to conduct the testing required by this section.

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a) General requirements. A manufacturer of light-duty vehicles and/or light-duty trucks shall test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845–01 exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year, starting with model year 2001.

(b) Criteria for additional testing. A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under § 86.1845–01 show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.

(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845–01. Testing conducted at high altitude under the requirements of § 86.1845–01 will be included in determining if a test group meets the criteria triggering testing required under this section.

(2) The vehicle tested under the requirements of § 86.1845–01(c)(2)(i) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.

(3) The SFTP composite emission levels shall include the IUVP FTP emissions, the IUVP US06 emissions, and the values from the SC03 Air Conditioning EDV certification test (without DFs applied). The calculations shall be made using the equations prescribed in § 86.164–01. If more than one set of certification SC03 data exists (due to running change testing or other reasons), the manufacturer shall choose the SC03 result to use in the calculation from among those data sets using good engineering judgment.

(c) Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845–01. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.

(d) Number of test vehicles. A manufacturer must test a minimum of ten vehicles of the test group or Agency-designated subset. A manufacturer may, at the manufacturer's discretion, test more than ten vehicles under this paragraph for a specific test group or Agency-designated subset. If a manufacturer chooses to test more than the required ten vehicles, all testing must be completed within the time designated in the testing completion requirements of § 86.1846–01(g). Any vehicles which are eliminated from the sample either prior to or subsequent to testing, or any vehicles for which test results are determined to be void, must be replaced in order that the final sample of vehicles for which test results acceptable to the Agency are available equals a minimum of ten vehicles. A manufacturer may cease testing with a sample of five vehicles if the results of the first five vehicles tested show mean emissions for each pollutant to be less than 75.0 percent of the applicable standard, with no vehicles exceeding the applicable standard for any pollutant.

(e) Emission testing. Each test vehicle of a test group or Agency-designated subset shall be tested in accordance with the Federal Test Procedure and/or the Supplemental Federal Test Procedure (whichever of these tests performed under § 86.1845–01 produces emission levels requiring testing under this section) as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(f) Geographical limitations. (1) Test groups or Agency-designated subsets certified to 50-state standards: For low altitude testing no more than 50 percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(2) Test groups or Agency-designated subsets certified to 49 state standards: For low-altitude testing all vehicles shall be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(3) Vehicles procured for high altitude testing may be procured from any area provided that the vehicle's primary area of operation was above 4000 feet.

(g) Testing required under this section must commence within three months of completion of the testing under § 86.1845–01 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845–01 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845–01 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.

(h) Limit on manufacturer conducted testing. For each manufacturer, the maximum number of test group(s)(or Agency-designated subset(s)) of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845–01 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845–01, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.

(i) Prior to beginning in-use confirmatory testing the manufacturer must, after consultation with the Agency, submit a written plan describing the details of the vehicle procurement, maintenance, and testing procedures (not otherwise specified by regulation) it intends to use.

(j) EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845–01 show mean emissions and a failure rate

which meet these criteria for additional testing.

§ 86.1847–01 Manufacturer in-use verification and in-use confirmatory testing; submittal of information and maintenance of records.

(a) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall establish, maintain and retain the following records organized and indexed by test group and evaporative/refueling family:

(1) A record documenting correlation as prescribed by § 86.1845–01(e)(3).

(2) A description of all laboratory equipment calibrations and verifications as prescribed by subpart B of this part or otherwise as appropriate using good engineering judgment.

(3) Procurement documentation. A description of the procurement area, a record of the source(s) of any list(s) of vehicles used as a basis for procurement, and a complete record of the number of vehicles rejected after positive vehicle owner response and reason(s) for manufacturer rejection of each rejected vehicle. A complete record of the number of vehicle owners/lessees in which attempt to contact was made and the number of vehicle owners/lessees actually contacted, the number of owners/lessees not contacted and the reasons and number of each for failure to contact, and the number of owners contacted who declined to participate.

(4) All records required to be maintained under this paragraph shall be retained by the manufacturer for a period of eight (8) years after the end of production of the test group to which they relate.

(b) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall submit to the Administrator on a quarterly calendar year basis, with the information provided to the Administrator within 30 days of the end of the quarter of each calendar year, the following records organized by test group and evaporative/refueling family.

(1) A complete record of all emission tests performed, including tests results, the date of each test, and the phase mass values for fuel economy, carbon dioxide and each pollutant measured by the Federal Test Procedure and Supplemental Federal Test Procedure as prescribed by subpart B of this part.

(2) For each test vehicle within a test group, a record and description of procedures and test results pertaining to any inspection (including the information listed in Appendix III to this subpart), diagnostics, and maintenance performed on the test vehicle prior to testing in as-received condition.

(3) A record and description of any inspection, diagnostics, and maintenance performed and/or testing (including emission results) of any vehicle tested subsequent to its initial as-received test.

(c) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall submit to the Administrator a record of the name and location of the testing laboratory(s) to be used to conduct testing for each model year 30 working days prior to the initiation of testing of that model year.

(d) The manufacturer of any test vehicle subject to § 86.1845–01 shall report to the Agency the test results (identifying the vehicle test group and emission test results) of any test vehicle in which the test vehicle fails to meet any applicable emission standard. The manufacturer must make this report within 72 hours of the completion of the testing of the test vehicle.

(e) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1846–01 shall establish, maintain and retain the following organized and indexed records by test group or Agency-designated subset.

(1) A description of all laboratory equipment calibrations and verifications as prescribed by subpart B of this part or by good engineering judgment.

(2) Procurement documentation. A description of the procurement area, a record of the source(s) of any list(s) of vehicles used as a basis for procurement, a complete record of: the number of vehicle owners/lessees in which attempt to contact was made and the number of vehicle owners/lessees actually contacted; the number of owners/lessees not contacted and the reasons and number of each for failure to contact; the number of owners contacted who declined to participate; and a complete record of the number of vehicles rejected after positive vehicle owner response and reason(s) for manufacturer rejection of each rejected vehicle.

(3) All records required to be maintained under this paragraph shall be retained by the manufacturer for a period of eight (8) years after the end of production of the test group to which they relate.

(f) Within 30 working days of the completion of testing of a test group or Agency-designated subset performed under § 86.1846–01, the manufacturer shall submit to the Administrator the following records organized by test group or Agency-designated subset.

(1) A complete record of all emission tests performed, including tests results, the date of each test, and the phase mass values for fuel economy, carbon dioxide and each pollutant measured by the Federal Test Procedure and Supplemental Federal Test Procedure as prescribed by subpart B of this part.

(2) For each test vehicle within a test group, a record and description of procedures and test results pertaining to any inspections, diagnostics, and maintenance performed on the test vehicle prior to any emission testing.

(3) A record and description of any inspections, diagnostics, maintenance performed and/or testing (including emission results) of any test vehicle tested subsequent to its initial emission test.

§ 86.1848–01 Certification.

(a)(1) If, after a review of the manufacturer's submitted Part I application, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that the application is complete and that all vehicles within a test group as described in the application meet the requirements of this Part and the Clean Air Act, the Administrator shall issue a certificate of conformity.

(2) If, after review of the manufacturer's application, request for certification, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that the application is not complete or the vehicles within a test group as described in the application, do not meet applicable requirements or standards of the Act or of this part, the Administrator may deny the issuance of, suspend, or revoke a previously issued certificate of conformity. The Administrator will notify the manufacturer in writing, setting forth the basis for the determination. The manufacturer may request a hearing on the Administrator's determination.

(b) A certificate of conformity will be issued by the Administrator for a period not to exceed one model year and upon such terms as deemed necessary or appropriate to assure that any new motor vehicle covered by the certificate will meet the requirements of the Act and of this part.

(c) All certificates are conditional upon the following conditions being met:

(1) The manufacturer must supply all required information according to the

provisions of §§ 86.1843–01 and 86.1844–01.

(2) The manufacturer must comply with all certification and in-use emission standards contained in subparts S and H of this part both during and after model year production.

(3) The manufacturer must comply with all implementation schedules sales percentages as required in § 86.1810 or elsewhere in this part. Failure to meet a required implementation schedule sales percentage will be considered to be a failure to satisfy a condition upon which the certificate was issued and any vehicles or trucks sold in violation of the implementation schedule shall not be covered by the certificate.

(4) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

(5) The manufacturer must meet the in-use testing and reporting requirements contained in §§ 86.1845–01, 86.1846–01, and 86.1847–01, as applicable. Failure to meet the in-use testing or reporting requirements shall be considered a failure to satisfy a condition upon which the certificate was issued. A vehicle or truck will be considered to be covered by the certificate only if the manufacturer fulfills this condition upon which the certificate was issued.

(6) Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer's application for certification (Part I and Part II).

(d) One certificate will be issued for each test group and evaporative/refueling family combination. For diesel fueled vehicles, one certificate will be issued for each test group. A certificate of conformity is deemed to cover the vehicles named in such certificate and produced during the model year.

(e) A manufacturer of new light-duty vehicles and light-duty trucks must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. Vehicles produced prior to the effective date of a certificate of conformity may also be covered by the certificate, once it is effective, if the following conditions are met:

(1) The vehicles conform in all respects to the vehicles described in the application for the certificate of conformity.

(2) The vehicles are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity.

(3) EPA is notified prior to the beginning of production when such production will start, and EPA is provided a full opportunity to inspect and/or test the vehicles during and after their production. EPA must have the opportunity to conduct SEA production line testing as if the vehicles had been produced after the effective date of the certificate.

(f) Vehicles imported by an original equipment manufacturer after December 31 of the calendar year for which the model year is named are still covered by the certificate of conformity as long as the production of the vehicle was completed before December 31 of that year.

(g) For test groups required to have an emission control diagnostic system, certification will not be granted if, for any emission data vehicle or other test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the circumstances described in § 86.1806–01(k)(1) through (6).

(h) Vehicles equipped with aftertreatment technologies such as catalysts, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of such components as catalysts and oxygen sensors. If these vehicles are imported or offered for importation without retrofit of the catalyst or other aftertreatment technology, they will be considered not to be within the coverage of the certificate unless included in a catalyst or other aftertreatment technology control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(i) For all light-duty vehicles and light light-duty trucks certified to NLEV standards under §§ 86.1710 through 86.1712, the following provisions apply:

(1) All certificates issued are conditional upon manufacturer compliance with all provisions of §§ 86.1710 through 86.1712 both during and after model year production.

(2) Failure to meet the requirements of § 86.1710(a) through (d) will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the fleet average NMOG standard shall not be covered by the certificate.

(3) Failure to comply fully with the prohibition against a manufacturer selling credits that it has not generated or are not available, as specified in § 86.1710(e), will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of this prohibition shall not be covered by the certificate.

(4) Failure to comply fully with the prohibition against offering for sale Tier 1 vehicles and TLEVs in the Northeast Trading Region, as defined in § 86.1702, after model year 2000 if vehicles with the same test groups are not certified and offered for sale in California in the same model year, as specified in § 86.1711(a), will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of this prohibition shall not be covered by the certificate.

(5)(i) The Administrator will issue a National LEV certificate of conformity for 2000 model year vehicles or engines certified to comply with the California TLEV emission standards.

(ii) This certificate of conformity shall be granted after the Administrator has received and reviewed the California Executive Order a manufacturer has received for the same vehicles or engines.

(iii) Vehicles or engines receiving a certificate of conformity under the provisions in this paragraph can only be sold in the states included in the NTR, as defined in § 86.1702, and those states where the sale of California-certified vehicles is otherwise authorized.

(6) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(7) For recall and warranty purposes, vehicles not covered by a certificate because of a violation of these conditions of the certificate will continue to be held to the standards stated in the certificate that would have otherwise applied to the vehicles.

§ 86.1849–01 Right of entry.

(a) Any manufacturer who has applied for certification of a new motor vehicle subject to testing under this subpart, or any manufacturer or entity who conducts or causes to be conducted in-use verification or in-use confirmatory testing under this subpart, shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during

operating hours on presentation of credentials to any of the following:

(1) Any facility where any such certification or in-use verification or in-use confirmatory testing or any procedures or activities connected with such testing are or were performed.

(2) Any facility where any new motor vehicle or test vehicle used for certification, in-use verification or in-use confirmatory testing which is being, was, or is to be tested is present.

(3) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle into a certification vehicle is taking place or has taken place.

(4) Any facility where any record or other document relating to § 86.1849–01(a) (1), (2), and/or (3) is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA official or EPA authorized representative shall be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle preconditioning, emissions tests and mileage (or service) accumulation, bench aging, maintenance, and vehicle soak and storage procedures, and to verify correlation or calibration of test equipment.

(2) To inspect and make copies of any such records, designs, or other documents, including those records specified in §§ 86.1843–01, 86.1844–01, and 86.1847–01.

(c) In order to allow the Administrator to determine whether or not production motor vehicles conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles described in the certification application for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or EPA authorized representative on presentation of credentials to:

(1) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission-related components described in the compliance application or used for certification testing into production vehicles is located or carried on; and

(2) Any facility where any motor vehicles to be introduced into commerce are manufactured or assembled.

(d) Upon admission to any facility referred to in paragraph (c) of this section, any EPA Enforcement Officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new motor vehicles and any component used in the assembly thereof that are reasonably related to the purpose of the entry.

(e) Any EPA official or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function set forth in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(f) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(g) For purposes of this section:

(1) ''Presentation of credentials'' shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(2) Where vehicle, component, or engine storage areas or facilities are concerned, ''operating hours'' shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (g)(2) of this section are concerned, ''operating hours'' shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(4) *Reasonable assistance* includes, but is not limited to, clerical, copying, interpretation and translation services, the making available upon request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle which is being, has been, or will be used for certification or in-use verification or confirmatory testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

§ 86.1850–01 Denial, suspension or revocation of certificate of conformity.

(a) If, after review of the manufacturer's application, request for certification, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that one or more test vehicles do not meet applicable requirements or standards of the Act or of this Part, the Administrator will notify the manufacturer in writing, setting forth the basis for the determination. The manufacturer may request a hearing on the Administrator's determination.

(b) Notwithstanding the fact that the vehicles described in the application may comply with all other requirements of this subpart, the Administrator may deny issuance of, suspend, or revoke a previously issued certificate of conformity if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer submits false or incomplete information.

(2) The manufacturer denies an EPA enforcement officer or EPA authorized

representative the opportunity to conduct authorized inspections as required under § 86.1849–01.

(3) The manufacturer renders inaccurate any test data which it submits, or fails to make a good engineering judgment in accordance with § 86.1851–01(c)(1).

(4) The manufacturer denies an EPA enforcement officer or EPA authorized representative reasonable assistance as required in § 86.1849–01.

(5) The manufacturer fails to provide the records required in § 86.1844–01 to the Administrator within the deadline set forth in the request for such information.

(6) The manufacturer fails to comply with all conditions under which the certificate of conformity was granted as specified in 86.1848–01.

(7) The manufacturer otherwise circumvents the intent of the Act or of this Part.

(c) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied, or that any failure to satisfy a condition is not substantial.

(d) If a manufacturer knowingly commits an infraction specified in paragraphs (b)(1) through (b)(7) of this section, knowingly commits any fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in § 86.1843–01, the Administrator may deem such certificate void *ab initio.*

(e) When the Administrator denies, suspends, revokes, or voids ab initio a certificate, EPA will provide the manufacturer a written determination. The manufacturer may request a hearing under § 86.1853–01 on the Administrator's decision.

(f) Any suspension or revocation of a certificate of conformity shall extend no further than to forbid the introduction into commerce of vehicles previously covered by the certificate which are still in the possession of the manufacturer, except in cases of such fraud or other misconduct that makes the certification void *ab initio.*

§ 86.1851–01 Application of good engineering judgment to manufacturers' decisions.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment, or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision does not meet the provisions of paragraph(d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis thereof.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1852–01 Waivers for good in-use emission performance.

(a) The Administrator may waive requirements of this subpart relating to development of emission-related information or test data if the Administrator determines with confidence that the in-use emission test verification data required in § 86.1845–01 are below the applicable emission standards for an appropriate period of time, and that such performance is likely to continue in subsequent model years.

(b) Any waiver granted under paragraph (a) of this section will be granted only if the Administrator determines that the waived requirement is not needed to assure continued emission compliance and the Administrator will have sufficient testing and other information in order to make certification decisions.

(c) Any waiver granted under paragraph (a) of this section would be limited in duration to a period of one model year, unless extended by the Administrator as a result of continued demonstrations of good in-use emission performance.

(d) The Administrator reserves the right to deny or revoke a waiver which may have been granted if he/she determines that the manufacturer no longer qualifies for the waiver.

§ 86.1853–01 Certification hearings.

(a)(1) After granting a request for a hearing under this subpart, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 86.1850–01(e), the Administrator may in his discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer upon the request of any party, or in his discretion, may arrange for a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of title 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

Appendix I to Subpart S of Part 86—Vehicle Procurement Methodology

I. *Test Sampling:* The master owner list will be obtained from manufacturer records or owner registration lists. The list shall include all vehicle configurations of the target reality check test group within the selected mailing area. The mailing area shall be within a radius of at least 20 miles from the test site.

II. *Selection Guidelines:* The manufacturer or their representative shall make a reasonable effort to contact potential participants. Solicitation letters will be sent to potential participants in the order of their appearance on a randomized master owner list. The manufacturer or their representative shall perform the following steps:

(a) The manufacturer or their representative shall mail solicitation letters in batches. The size of each batch is at least five times the required number of vehicles to be tested for the group that year. First class mail shall be used.

(b) If the response rate is less than 20% after two to four weeks, the manufacturer or their representative shall make one more attempt and send a new solicitation package to the potential participants who have not yet responded.

(c) A telephone questionnaire will be conducted on a random selection of returned, positive-response postcards.

(d) If the required number of vehicles is not obtained, additional solicitation letters shall be sent to the next batch of potential participants in the order of their appearance on a randomized master owner list until the required number of vehicles are procured.

(e) Alternative selection methods may be used with advanced approval from the Administrator.

'III. *Vehicles Not Available:* Vehicles may not be available or will not be pursued for procurement for the following reasons:

(a) The potential participant response indicates ''not willing to participate.''

(b) The customer has moved out of the area.

(c) The solicitation letter is undeliverable.

(d) The customer did not respond after two attempts.

(e) The vehicle is not in the appropriate mileage or age category.

Appendix II to Subpart S of Part 86—As-received Testing Vehicle Rejection Criteria

1. The odometer is inoperative, has been replaced, or the indicated mileage is outside the target range.

2. The emission system of the vehicle has been obviously tampered or the vehicle has been operated on leaded fuel. A manufacturer may request a vehicle be rejected because of the addition of an aftermarket security system if the manufacturer establishes that the installation would make that vehicle's emissions unrepresentative.

3. The vehicle has been used for severe duty (trailer towing for passenger cars, snow plowing, racing)

4. The vehicle has a history of extensive collision damage or major engine repair (piston, crank, cylinder head, engine block).

5. The vehicle exhibits ominous noises or serious fluid leaks from the engine or transmission, a modified exhaust system, (headers, side pipes, aftermarket catalysts, etc) or an exhaust system with an audible leak.

6. Testing the vehicle could endanger the safety of the vehicle, test facility, or individuals conducting the testing.

7. The MIL light is flashing (severe misfire indication).

8. Other items with prior agency approval.

Appendix III to Subpart S of Part 86—As-Received Inspection

Items to be recorded at time of Initial Inspection of Vehicle—

1. Date of Inspection
3. Test Group
4. Evaporative/refueling Family
5. Vehicle model
6. Odometer Reading
7. Build Date
8. MIL light on/off status
9. Readiness code status
10. Stored OBD codes
11. Any conditions referenced in Appendix II to this subpart which result in vehicle being rejected from program.

PART 88—[AMENDED]

53. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

54. Section 88.301–93 of subpart C is amended by adding a new paragraph (c) to read as follows:

§ 88.301–93 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

PART 600—[AMENDED]

55. The authority for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2002, 2003, 2005, 2006, and 2013.

56. Section 600.002–85 is amended by revising paragraph (a)(15) to read as follows:

§ 600.002–85 Definitions.

(a) * * *

(15) *Certification Vehicle* means a vehicle which is selected under 40 CFR 86.084–24(b)(1) or 40 CFR 86.1824–01 as applicable, and is used to determine compliance under 40 CFR 86.084–30 or 40 CFR 86.1844–01 as applicable for issuance of an original certificate of conformity.

* * * * *

57. Section 600.005–81 is amended by revising the introductory text to read as follows:

§ 600.005–81 Maintenance of records and rights of entry.

The provisions of this section are applicable to all fuel economy data vehicles. Certification vehicles are required to meet the provisions of 40 CFR 86.000–7 or 40 CFR 86.1844–01, as applicable:

* * * * *

58. Section 600.006–89 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 600.006–89 Data and information requirements for fuel economy vehicles.

* * * * *

(c) * * *

(1) For vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen in accordance with 40 CFR 86.1829–01(a) or 40 CFR 86.1844–01), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

* * * * *

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in 40 CFR 86.087–21 or 40 CFR 86.1844–01 as applicable, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

* * * * *

59. Section 600.007–80 is amended by revising paragraphs (a) and (b)(3), (b)(4) and (e)(1) to read as follows:

§ 600.007–80 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen per 40 CFR 86.080–24(c) or 40 CFR 86.1829–01(a) as applicable, are considered to have met the requirements of this section.

(b) * * *

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to 40 CFR 86.079–26(a)(2) or 40 CFR 86.1831–01 as applicable.

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per § 86.079–28 or § 86.1841–01 as applicable will be used.

* * * * *

(e) * * *

(1) The Administrator may, under the provisions of 40 CFR 86.079–37(a) or 40 CFR 86.1830–01 as applicable, request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

* * * * *

60. A new § 600.008–01 is added to read as follows:

§ 600.008–01 Review of fuel economy data, testing by the Administrator.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting fuel economy tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(2) Retesting and official data determination. For any vehicles selected for confirmatory testing under the provisions of paragraph (a)(1) of this section, the Administrator will follow this procedure:

(i) The manufacturer's data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

(ii) If, in the Administrator's judgment, the comparison in paragraph (a)(2)(i) of this section indicates a disparity in the data, the Administrator will repeat the city test or the highway test or both as applicable.

(A) The manufacturer's average test results and the results of the Administrator's first test will be compared with the results of the Administrator's second test as in paragraph (a)(2)(i) of this section.

(B) If, in the Administrator's judgment, both comparisons in paragraph (a)(2)(i)(A) of this section, indicate a disparity in the data, the Administrator will repeat the city fuel economy test or highway fuel economy test or both as applicable until:

(*1*) In the Administrator's judgment no disparity in the data is indicated by comparison of two tests by the Administrator or by comparison of the manufacturer's average test results and a test by the Administrator; or

(*2*) Four city tests or four highway tests or both, as applicable, are conducted by the Administrator in which a disparity in the data is indicated when compared as in paragraph (a)(2)(ii) of this section.

(iii) If there is, in the Administrator's judgment, no disparity indicated by comparison of manufacturer's average test results with a test by the Administrator, the test values generated by the Administrator will be used to represent the vehicle.

(iv) If there is, in the Administrator's judgment, no disparity indicated by comparison of two tests by the Administrator, the harmonic averages of the city and highway fuel economy results from those tests will be used to represent the vehicle.

(v) If the situation in paragraph (a)(2)(ii)(B)(*2*) of this section occurs, the Administrator will notify the

manufacturer, in writing, that the Administrator rejects that fuel economy data vehicle.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrators determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the test is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy value is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator for that model year; or

(v) The fuel economy value is a potential fuel economy leader for a class of vehicles based on Administrator provided cut points for that model year.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) The manufacturer may, in lieu of conducting a retest, accept the lower of the original and confirmatory test fuel economy results for use in subpart C or F of this part.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). The manufacturer may, in lieu of conducting a second retest, accept the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results for use in subpart C or F of this part.

(c) *Review of fuel economy data.* (1) Fuel economy data must be judged reasonable and representative by the Administrator in order for the test results to be used for the purposes of subpart C or F of this part. In making this determination, the Administrator will, when possible, compare the results of a test vehicle to those of other similar test vehicles.

(2) If testing was conducted by the Administrator under the provisions of paragraph (a) of this section, the fuel economy data determined by the Administrator under paragraph (a) of this section, together with all other fuel economy data submitted for that vehicle under § 600.006(c) or (e) will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c) (1) of this section will be accepted for use in subpart C or F of this part.

(ii) City and highway test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(3) If confirmatory testing was not conducted by the Administrator but confirmatory testing was conducted by the manufacturer under the provisions of paragraph (b) of this section, the fuel economy data determined by the Administrator under paragraph (b) of this section, will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City and highway test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(4) If no confirmatory testing was conducted by either the Administrator or the manufacturer under the provisions of paragraph (a) and (b) of this section, respectively, then the data submitted under the provisions of § 600.006(c) or (e) shall be accepted for use in subpart C or F of this part.

(i) City and highway test data will be considered separately.

(ii) If more than one test was conducted, the harmonic average of the test results shall be accepted for use in subpart C or F of this part.

(d) If, based on a review of the fuel economy data generated by testing under paragraph (a) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he/she may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(e)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing equipment is faulty or improperly calibrated, or if records do not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (h)(1) of this section.

(3) If, based on tests required under paragraph (e)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he/she deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

61. Section 600.010–86 is amended by revising paragraphs (a) introductory text and (c)(1)(i) to read as follow:

§ 600.010–86 Vehicle test requirements and minimum data requirements.

(a) For each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in 40 CFR part 86 for addition of a model after certification or approval of a running change (40 CFR 86.079–32, 86.079–33 and 86.082–34 or 40 CFR 86.1842–01 as applicable):

* * * * *

(c) * * *

(1) * * *

(i) Data required for emission certification under 40 CFR 86.084–24, 86.079–32, 86.079–33, and 86.082–34 or 40 CFR 86.1828–01 and 86.1842–01 as applicable,

* * * * *

62. Section 600.111–93 is amended by revising paragraph (g)(2) to read as follows:

§ 600.111–93 Test procedures.

* * * * *

(g) * * *

(2) False starts and stalls during the preconditioning cycle must be treated as in 40 CFR 86.136 (d) and (e). If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to 40 CFR 86.079–25 or 40 CFR 86.1834–01 as applicable, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

* * * * *

63. Section 600.113–93 is amended by revising paragraph (d) to read as follows:

§ 600.113–93 Fuel economy calculations.

* * * * *

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for total HC, CO, CO2 and, where applicable, CH3, OH, HCHO, NMHC and CH4 and, the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with 40 CFR 86.084–26(a)(6)(iii) or 40 CFR 86.1837–01 as applicable. The CO2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb.

* * * * *

64. Section 600.207–93 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 600.207–93 Calculation of fuel economy values for a model type.

(a) * * *

(3) * * *

(iii) The requirements of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in 40 CFR 86.084–21 or 40 CFR 86.1844–01 as applicable.

* * * * *

65. A new § 600.313–01 is added to read as follows:

§ 600.313–01 Timetable for data and information submittal and review.

(a) A manufacturer shall submit to the Administrator fuel economy label values and sufficient information to determine fuel economy label values within the following time constraints (except for manufacturers designated under § 600.312(a)(4) who shall submit the information no later than thirty calendar days prior to the date the model type [vehicle] is initially offered for sale.

(1) For initial general label values, no later than five working days before the date that the model type is initially offered for sale;

(2) For specific label values, no later than five working days before any vehicles are offered for sale;

(3) For model types having label values updated because of running changes (as required under § 600.314(b)), the submission must be made at least five working days before the date of implementation of the running change.

(b) A manufacturer may not proceed with any label calculation until the data from each vehicle used in such calculation satisfies the requirements of § 600.008, except as allowed under the provisions of § 600.314–01(e) and approved by the Administrator.

(c) If the Administrator has waived any testing in paragraph (b) of this section and subsequently finds that the decision to waive testing was based on an incorrect data submission or that a fuel economy offset exists (based on subsequent testing of that manufacturer's product line), the Administrator may require confirmation of the data generated by any such waived vehicle.

66. A new § 600.314–01 is added to read as follows:

§ 600.314–01 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economies for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in § 600.507(a).

(2) For separate model types created in § 600.207(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in § 600.010(c)(1)(ii) shall be met prior to recalculation.

(3) Label value recalculations shall be performed to read as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.209 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with §§ 600.207 and 600.209, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax as needed).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(e) The manufacturer may request permission from the Administrator to calculate and use label values based on test data from vehicles which have not completed the Administrator ordered confirmatory testing required under the provisions of § 600.008–00(c). If the Administrator approves such a calculation the following procedures shall be used to determine if relabeling is required after the confirmatory testing is completed.

(1) The Administrator ordered confirmatory testing shall be completed as quickly as possible.

(2) Using the additional data under paragraph (e)(1) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.209 except that the values shall be rounded to the nearest 0.1 mpg.

(3) The existing label values, calculated in accordance with §§ 600.207 and 600.209, shall be rounded to the nearest 0.1 mpg.

(4) Relabeling. (i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.5 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(ii) If both the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.1 mpg or more and the recalculated gas guzzler tax rate determined under the provisions of § 600.513–91 is larger, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) and gas guzzler tax statement and rates to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(5) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (e)(4) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

67. Section 600.507–86 is amended by revising paragraph (a) introductory text to read as follows:

§ 600.507–86 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under 40 CFR 86.079–32, 86.079–33, or 86.082–34 or 40 CFR 86.1842–01 as applicable, which:

* * * * *

68. A new § 600.512–01 is added to read as follows:

§ 600.512–01 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy. The results of the manufacturer calculations and summary information of model type fuel economy values which are contained in the average calculation shall be submitted to the Secretary of the Department of Transportation, National Highway and Traffic Safety Administration.

(b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 90 days after the end of the model year.

(2) The Administrator may waive the requirement that the model year report be submitted no later than 90 days after the end of the model year. Based upon a request by the manufacturer, if the Administrator determines that 90 days is insufficient time for the manufacturer to provide all additional data required as determined in § 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the labeling calculations and subsequently required by the Administrator in accordance with § 600.507;

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under 40 CFR 86.1842–01;

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509;

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2);

(5) The manufacturer's average fuel economy value calculated according to § 600.510(c);

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made; and

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

[FR Doc. 99–9062 Filed 5–3–99; 8:45 am]

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federal register

Tuesday
May 4, 1999

Part III

Department of Commerce

Economic Development Administration

National Technical Assistance—Request for Proposals (RFP); Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 990323079–9079–01]

RIN 0610–ZA10

National Technical Assistance—Request for Proposals (RFP)

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice of Availability of Funds.

SUMMARY: EDA solicits proposals for National Technical Assistance projects, under 13 CFR Part 307, Subpart C (64 FR 5347) to undertake and report on securitization of economic development loans from revolving loan funds. EDA anticipates making three to five awards from a total of $1.0 million available, subject to available funding in fiscal year 1999.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on May 18, 1999, at 2:00 p.m. in the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW, Washington, DC 20230, Room 1412, at which time questions on this RFP can be answered. Potential applicants are encouraged to provide written questions (See Address section below) by May 11, 1999. Prospective applicants unable to attend this pre-proposal conference may participate by telephone conference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–5:00 EDT on May 17, 1999.

EDA will also conduct pre-proposal conferences during the EDA regional conferences in Boca Raton, FL (June 7–9, 1999), Dallas, TX (June 4, 1999), and Long Beach, CA (April 27–29, 1999). To find out the specific location and time of a regional pre-proposal conference, contact David F. Witschi (202) 482–2659 or John J. McNamee (202) 482–4085.

Initial proposals for funding under this program will be accepted through June 21,1999. Initial proposals received after 5:00 p.m. EDT in Room 7019, on June 21, 1999, will not be considered for funding. By July 2, 1999, EDA will advise successful proponents to submit full applications (containing complete proposals as part of the application), OMB Control Number 0610–0094. Completed applications must be submitted to EDA by July 16, 1999. EDA will make awards under this RFP no later than September 30, 1999.

ADDRESSES: Send initial proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David F. Witschi, (202) 482–2659 or John J. McNamee (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105–393) (PWEDA) authorizes EDA to make grants for, among other things, demonstrations of innovative activities or strategic economic development investments (42 U.S.C. 3147). Pub. L. 105–277 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development-Technical Assistance Program.

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, Part 307 (64 FR 5347).

II. Area of Special Emphasis

EDA invites proposals to design, undertake, and evaluate transactions demonstrating securitization of economic development loans in a variety of EDA-funded Revolving Loan Fund (RLF) portfolios. For the purposes of this project, EDA defines securitization transactions to include sales of loans, pledging the future income stream of a loan, and similar secondary market activities. This demonstration program is designed to generate successful transactions that can serve as models for use by federal, state, or nonprofit entities for future transactions. At this time, EDA does not endorse or indicate any preference for any particular securitization technique or method. EDA does recognize, however, in viewing this as a demonstration program, that the cost of completing a transaction may be higher and the return to participating RLFs lower than would eventually be expected once securitization of economic development loans becomes a more established practice.

A. Background

Current estimates suggest that there may be as many as several thousand RLFs involved in economic development lending with total assets of several billion dollars. These RLFs have been created over the past 20 years with funding from a variety of federal, state, and nonprofit sources. EDA alone has capitalized more than 400 RLFs, with nearly $700 million in assets (See 13 CFR Part 308 (64 CFR 5347) for a program description). EDA RLFs are located throughout the country and are managed by states, local units of government, Economic Development Districts and nonprofit organizations engaged in economic development. To date, only a handful of secondary market transactions involving RLF-sourced economic development loans have been undertaken. EDA is interested in expanding the secondary market for economic development loans as a cost-effective and fiscally sound means of leveraging the capital available to RLFs. Until greater experience is gained in making actual transactions, the costs of securitization will remain high and economic development loans will draw little interest from potential investors. This demonstration project will allow EDA and other entities involved in economic development lending to gain experience, expertise and knowledge required to develop securitization standards, guidelines and other requirements necessary to make securitization an effective and fiscally sound strategy for funding economic development. The demonstration program will also stimulate further interest in economic development loan programs by the secondary investment community.

B. Scope of Work

The successful applicant(s) will:

(1) Propose an actual securitization transaction that includes loans from an EDA-funded RLF. EDA will not consider proposals limited to feasibility studies or examination of hypothetical transactions. The proposal need not identify specific buyers and sellers, but it should describe how buyers and sellers will be determined.

(2) Make a sincere, good faith effort to complete the proposed transaction.

(3) Include a plan to ensure competitive pricing.

(4) Address the impact the securitization may have on RLF borrowers.

(5) Provide information generated by the transaction to assist EDA and others in their efforts to:

- Identify those characteristics of loans and loan funds that influence the success or failure of securitization efforts.

• Identify the different range of securitization approaches available, as well as their relative benefits, costs and possible markets.

• Develop RLF loan documentation standards as well as standards for critical RLF organizational procedures and practices.

• Identify and quantify the importance of specific factors that contribute to any discount of the loans securitized. These factors may include reduced profitability and increased risk of the loans due to: (a) Economic development lending policies; (b) actual performance characteristics of the RLF loans and borrowers; (c) the quality of documentation, underwriting standards and loan servicing practices of the RLF lender(s); and/or (d) the scarcity of actuarial information on economic development lending.

• Determine if securitization is influencing subsequent loan selection, evaluation, servicing, or other fund management practices. EDA anticipates this will include a program of voluntary follow-on monitoring after the project is completed.

• Address the effect of discounted transactions (especially if repeated) on the ability of the RLF to sustain itself.

While information gathered from each transaction may be different, this information is expected to help other RLFs interested in preparing portfolios for future securitization. The information gathered in the demonstration program is expected to be disseminated by EDA to the broader economic development lending community.

(6) Prepare a final report documenting lessons learned from the securitization that may help future securitization participants.

C. Additional Requirements

The successful applicant(s) must:

(1) Demonstrate that each participating RLF needs, and can utilize, further capitalization within a reasonable time frame.

(2) Propose securitization methods or techniques that are generally expected to be replicable.

(3) Not use federal funds for loan guarantees or other activities designed to influence market prices by artificially enhancing the credit-worthiness of loans to be sold.

(4) Describe how transaction proceeds will be used and disbursed. In the case of an EDA-funded RLF, any net proceeds of a securitization (after transactions costs are paid) must be applied toward new loans in accordance with the original lending plan of the RLF or a subsequent plan approved by EDA.

Successful applicant(s) will incorporate one or more of the following features in the proposed securitization(s). (Note: incorporation of all features is not required and, in fact, several of the following are mutually exclusive.) A proposed securitization may:

(1) Be limited to the loans of a single RLF, or be subregional, regional or national in scope.

(2) Involve loans from both urban and rural RLFs; Economic Development District operated RLFs; community based organization RLFs; and RLFs sponsored by other federal, state, and local government agencies. RLFs funded by non-EDA sources are responsible for securing appropriate and timely approvals of their funding agencies before a transaction is completed.

(3) Demonstrate innovative techniques for loan pooling from different RLF portfolios. This is intended to encourage willing and qualified RLFs to participate, regardless of portfolio size.

(4) Be transacted either by public offering or private placement.

(5) Use credit enhancement techniques provided they do not require an additional federal subsidy.

(6) Include rating of issues by recognized rating services.

D. Costs

Ordinarily, the applicant is expected to provide a 50% nonfederal share of project costs. However, the Assistant Secretary may waive the required 50% matching share of the total project costs, provided the applicant can demonstrate: (1) the project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent nonfederal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR 307.9; 64 FR 5429).

For the purposes of this demonstration project, EDA funds may be used to pay for:

• Professional fees associated with the transaction, including, but not limited to, financial advisors, trustee and legal expenses and for the cost to perform due diligence. In the event a transaction is completed successfully, such costs are expected to be recovered from the transaction proceeds, and may be retained by the applicant and/or participating RLFs for uses approved by EDA. Such reuse of EDA funds should be described in the proposal (See item C (4) above).

• Organizational and administrative fees and expenses, including direct salaries of applicant staff involved with the securitization.

• Other costs normally eligible under EDA's Technical Assistance Program.

E. Timing

Each project will begin on the date specified in the grant award, which shall be on or before September 30, 1999. Each securitization transaction must be completed no later than nine months after the date of approval of the grant. A final report and evaluation must be submitted to EDA within 90 days of completion of the securitization transaction.

F. Briefings and Workshops

Each award includes a requirement that the applicant conduct a total of up to three briefings or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth below are for completed transactions and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Most likely, this will include one briefing in Washington, DC, with the other briefings/workshops held in conjunction with one or more of EDA's regional conferences.

III. How to Apply

A. Eligible Applicants

See EDA's interim final rule at 13 CFR 300.2 (64 FR 5347). Eligible applicants are as follows: areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states; institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals.

A lead applicant may have one or more other eligible applicants as co-applicants. Where appropriate, applicants should identify in advance professional financial and/or legal consultants who will participate in the

project under contract. Such contracts are subject to procurement requirements as set forth in 15 CFR Part 14 (63 FR 47155) or 15 CFR Part 24, as applicable.

B. Proposal Submission Procedures

Initial proposals submitted by potential applicants should include: (1) a description of how the applicant(s) intend(s) to carry out the scope of work; (2) a proposed budget and accompanying narrative; (3) resumes/qualifications of key staff, and (4) a proposed time line. EDA will not accept proposals submitted by FAX. Proposals received after 5:00 p.m. EDT in Room 7019, on June 21, 1999, at the address provided above, will not be considered.

IV. Selection Process and Evaluation Criteria

Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and requirements under 13 CFR Chapter III (64 FR 5347), including eligibility and relevance to the specified project as described herein. All proposals must:

(1) Meet EDA's statutory and regulatory requirements;

(2) Propose an actual securitization; and

(3) Document a structure that ensures an arms-length transaction between the seller and the purchaser.

EDA will carry out its selection process using the following criteria:

(1) The quality of a proposal's response to the scope of work proposed; and

(2) The ability of the prospective applicant to successfully carry out the proposed activities. If an initial proposal is selected, EDA will invite the proponent(s) to submit a full proposal and supply the applicant(s) with an Application for Federal Assistance.

From the full proposals and applications, EDA will select the applicant(s) it deems most qualified and cost-effective. EDA anticipates that more full proposals and applications will be received than will eventually be funded.

V. Additional Information and Requirements

See 64 FR 9221, Part III for additional information and requirements (available on the internet at http://www.doc.gov/eda/html/notice.htm, under the heading ''Economic Development Programs-Availability of Funds'').

Dated: April 26, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–10830 Filed 5–3–99; 8:45 am]

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federal register

Tuesday
May 4, 1999

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAR Case 95–013]

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting is being held to discuss replacing the property management concepts contained in the proposed rule published at 62 FR 30186, June 2, 1997, with commercial practices and to discuss other changes stemming from public comments on that rule.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on May 18 and, if needed, May 19, 1999.

Discussion Materials: Drafts of the materials to be discussed at the public meeting will be available electronically (http://www.acq.osd.mil/dp/mpi/) on or about May 4, 1999. Please contact Ms. Angelena Moy (see contact information below) for additional information.

ADDRESSES: The location of the public meeting is VSE Corporation, 2550 Huntington Avenue, Alexandria, VA 22303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by e-mail (moyac@acq.osd.mil) or telephone (703) 695–1097/1098, or fax (703) 695–7596.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to revise Federal Acquisition Regulation (FAR) Part 45 to simplify the management and disposition of Government property was published in the **Federal Register** at 62 FR 30186, June 2, 1997. A public meeting was conducted on February 17, 1998, to address comments received on that rule. As a result of the public comments and to consider additional commercial property management practices, four significant changes to, and a restructuring of, the June 2, 1997, proposed rule are being considered:

1. The requirement that contractors have or maintain specified Government property management processes is replaced by a general requirement to use sound business practices to control, protect, and maintain Government property.

2. Consistent with comparable commercial practice, contractors shall return property furnished for performance of a contract to the Government in the same condition, less reasonable wear and tear, as when the property was furnished to the contractor.

3. Generally, contractors are liable for loss, theft, or destruction of, or damage to, Government-furnished property.

4. Under cost-reimbursement or time-and-materials contracts, contractors will have title to certain low value special tooling and special test equipment.

The public meeting will provide a forum to discuss the publics views of these new commercial property management concepts.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–11060 Filed 5–3–99; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Tuesday
May 4, 1999

Part V

Department of Labor

Employment and Training Administration

Measures for Increasing Efficiency in the Permanent Labor Certification Program; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

[General Administrative Letter No. 1–97, Change 1]

Measures for Increasing Efficiency In the Permanent Labor Certification Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is publishing for public comment General Administrative Letter (GAL) No. 1–97, Change 1, Subject: *Measures for Increasing Efficiency in the Permanent Labor Certification Process,* which it issued as a result of the settlement agreement reached in *Lauretta V. Herman* (No. 98–56061, (9th Cir. March 5, 1999)). GAL 1–97 was originally issued on October 1, 1996. GAL 1–97, Change 1, published below differs from the October 1, 1996, issuance primarily in that the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published has been removed.

DATES: Interested persons are invited to submit written comments on GAL 1–97, Change 1 on or before July 6, 1999.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW. Room N–4456, Washington, DC 20210, Attention: John R. Beverly, III, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration. 200 Constitution Avenue NW., Room N–4456, Washington, DC 20210. Telephone (202) 219–4369 (this is not a toll-free number).

(Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.)

Signed at Washington, DC, this 24 day of April, 1999.

John R. Beverly III,

Director, Employment Service.

Directive: General Administrative Letter No. 1–97, Change 1.

To: All Regional Administrators

From: David Henson, Director, Office of Regional Management.

Subject: Measures for Increasing Efficiency in the Permanent Labor Certification Process.

1. *Purpose.* To modify previously provided procedural guidance for increasing efficiency in the permanent labor certification process under current regulations in order to handle increasing workloads with declining staff resources.

2. *References.* 20 CFR Part 656, *Technical Assistance guide (TAG) No. 656 Labor Certifications,* and General Administration Letter (GAL) No. 15–95.

3. *Background.* GAL 1–97 was originally issued in October 1996. The goal of GAL 1–97 was to increase efficiency in the permanent labor certification process. To accomplish this goal, the GAL promulgated several measures which were intended to allow speedier, more efficient processing of permanent cases within current regulations. In the more than two years of experience under GAL 1–97 the evidence indicates that, in general, the measures put forth in the GAL have been effective. In the past two years, in spite of declining staff, the States and Regional Offices have completed action on more cases than in past years when more staff were available. However, as a result of the settlement agreement in *Lauretta V. Herman,* March 5, 1999, the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published is being removed. This change to GAL 1–97 is to remove that requirement and reemphasize the other measures stated in that GAL.

This GAL should be interpreted in a manner consistent with the labor certification provisions of the Immigration and Nationality Act, Department of Labor regulations promulgated thereunder, and Board of Alien Labor Certification Appeals (BALCA) case law. No Notice of Findings (NOF) shall be issued and no labor certification denied based solely upon this GAL, as this GAL is not intended to substantively change the Department's regulations or BALCA case law for the adjudication of applications for labor certification.

4. *Action Required.* Administrators are requested to:

A. Provide the attached policy and procedural guidance to appropriate staff.

B. Instruct alien labor certification staff to implement the measures for increasing efficiency and follow the procedures in processing permanent labor certification applications.

C. Apply these procedures to applications when processing begins on or after the effective date of this GAL.

5. *Inquiries.* Direct questions to the appropriate Regional Certifying Officer.

6. *Attachment.* Increasing Efficiency in the Permanent Labor Certification Process.

Expiration Date: June 30, 2001.

Increasing Efficiency in the Permanent Labor Certification Process

A. Introduction

In order to increase efficiency, the measures below shall be implemented under current regulations at 20 CFR 656 by Regions and State Employment Security Agencies (SESAs) on May 1, 1999. These measures are designed to significantly reduce U.S. worker referrals on jobs where their background and experience indicate they are not fully qualified for the job's stated requirements, to reduce SESA and Regional Office backlogs, and to allow Regions and SESAs to handle increasing workloads in a timely manner with fewer staff.

To promote consistency among Regions and SESAs, operating procedures have been provided for handling applications involving unduly restrictive job requirements, reduction in recruitment, and limited review processing. Depending on local situations, other efficiency measures may be implemented by the Regional Certifying Officer.

B. Measures to Increase Efficiency

1. Unduly Restrictive Job Requirements

As stated in the regulations and Technical Assistance Guide, the job opportunity's requirements shall be those normally required for the job in the United States, unless adequately documented as arising from business necessity. Normal requirements for the occupation in which the job opportunity is included may be found in the *Dictionary of Occupational Titles.*

2. Reduction in Recruitment Requests (RIRs)

Regions and SESAs will encourage reduction in recruitment requests on applications:

—For occupations for which there is little or no availability;

—Which have no restrictive requirements;

—Which meet prevailing wage; and

—For which the employer can show adequate recruitment through sources normal to the occupation and industry within the previous 6 months

RIR requests will be given expedited processing by SESAs and Regional Offices.

3. Notice of Findings (NOF) Extensions

After issuing a NOF, Certifying Officers will grant only one extension of time beyond the initial 35 days in which the employer can file a rebuttal. The extension may be granted up to 35 days. Further extensions will not be granted.

4. Harmless Error

Certifying Officers will have the discretion to excuse a harmless error on the part of the employer to fully comply with the regulations if the Certifying Officer determines that the labor market was sufficiently tested to warrant a finding that qualified U.S. workers are not available for the job opportunity and employment of the alien will not adversely affect wages and working conditions of U.S. workers similarly employed. A finding of harmless error will be made by the Certifying Officer on a case-by-case basis and shall not set a precedent for another case.

5. Limited Review Processing

Certifying Officers may work with their SESAs to set up a system to identify and flag applications that are ready for transmittal to the Region and apparently have no processing problems. Such applications may not have special job requirements, unusual job duties, applicant availability, or wage issues. Based on the recommendation of the SESA, such cases will generally be approved as they are received in the Region with minimal review. For quality control purposes, a small number of cases in various occupations will be randomly selected for a more extensive review.

6. Resumé Screening

SESA staff shall screen resumés of U.S. workers against the employer's job requirements regardless of whether or not they are considered by the SESA to be unduly restrictive. Only those resumés of fully qualified applicants, based on the employer's final stated requirements, shall be sent to the employer and to the Regional Office. Recruitment on the job order will cease when it is forwarded to the Regional Office. Late resumés may be sent to employers having similar job offers or returned to applicants. After the labor certification has been issued, resumés will be discarded. Regions shall retain resumés of qualified applicants when a NOF or Final Determination has been issued.

7. Standardized Recruitment

When the Certifying Officer requires the employer, through an NOF, to recruit again because of deficiencies in the first recruitment, the employer shall be instructed to place a 1-day Sunday advertisement in an appropriate newspaper of general circulation. The ad must run in conjunction with a 10-day job order placed with the SESA. This reduced level of recruitment may not be used by employers who have never recruited for the position, or when the Certifying Officer has determined that a trade or professional journal is the most appropriate advertising medium.

8. Advertisements

Because the SESA will not have sufficient time to review a draft ad once a job order has been placed, SESAs are only required to assist in drafting the text or reviewing a draft ad for accuracy if the ad is submitted with an initial or resubmitted application.

9. Applicant Questionnaires

Because of budgetary constraints at the SESAs and Regional Offices, SESAs should no longer send questionnaires to U.S. workers who were interviewed as the result of the labor certification process.

C. Operating Procedures

1. Unduly Restrictive Job Requirements

a. The SESA will review each permanent labor certification application to consider whether there may be any unduly restrictive requirements.

b. The SESA will notify the employer of any potential unduly restrictive requirements and request the employer to either remove those requirement(s) or provide a business necessity justification for the requirement(s) in question within 45 days of the date of the request. If complete information is not received within 45 days, the application will be returned to the employer. If it is refiled, it will be treated as a new application with the original date of receipt deleted and replaced with the refiling date.

c. The SESA will also request, as part of the business necessity documentation, that the employer provide documentation to show that the job existed and was previously filled at the same requirements before the alien was hired. The employer may submit documentation including but not limited to position descriptions, organizational charts and payroll records, etc. Jobs which did not exist before the alien was hired will be considered jobs that are not truly open to U.S. workers, unless the employer can clearly demonstrate that a major change in the business operation caused the position to be created after the alien was hired.

d. After the employer responds to the State's request for further information regarding the requirements for the job opportunity, the State will then proceed to complete the processing of the application, including the necessary advertisement(s) and SESArch of the SESA applicant files.

2. Reduction in Recruitment Requests (RIRs)

a. An employer may file a reduction in recruitment request for any occupation, except those listed on Schedule B, if the employer can show that an adequate test of the labor market has occurred at prevailing wages and working conditions through sources normal to the occupation and industry within the previous 6 months.

b. SESAs and Certifying Officers will encourage requests for reduction in recruitment in occupations with little or no availability and in circumstances as determined by individual Certifying Officers.

c. Upon receiving an employer's written request for a reduction in recruitment, the SESA shall review the application for completeness and determine the appropriate prevailing wage.

d. The SESA shall return the application to the employer for correction and/or additional information if there are deficiencies in the application, such as an inadequate wage offer or restrictive job requirements.

e. When there are deficiencies in the application that would have affected the recruitment, the SESA should advise the employer that it is unlikely that the Certifying Officer will approve an RIR and suggest that the employer recruit through the regular process. However, the SESA may not discourage the use of RIR nor refuse to transmit a written request for an RIR to the Certifying Officer.

f. When transmitting the RIR to the Certifying Officer, the SESA should include a recommendation, based on its knowledge of the labor market, for or against granting the request.

g. The RIR will be given expedited processing at the Region if it contains no deficiencies. Those with deficiencies identified by the SESA shall be processed in the order that they are received along with other applications.

h. Among the factors to be considered by the Certifying Officer in making determinations on RIRs pursuant to section 20 CFR 656.24 are the following:

- Adequacy of the recruitment conducted by the employer applicant, e.g., newspaper advertising, job fairs, internet.

- Documentation of normal recruitment practices in the industry and occupation furnished by the employer.
- Availability of U.S. workers for the occupation involved in the employer's application for which recruitment has been conducted through the SESA in the past, as shown by ES referrals to job orders.
- SESA recommendations/comments.
- Certifying Officer's knowledge of the local labor market.

If RIR is denied because the recruitment is not acceptable, the application shall be returned to the SESA for regular processing in the order in which it is received along with other applications.

i. If the RIR request contains deficiencies, such as inadequate wage offer or restrictive job requirements, the Certifying Officer shall issue an NOF denying the RIR and citing the deficiencies.

3. Limited Review Processing

a. At his or her discretion, the Certifying Officer, may establish a process for making expedited determinations on applications based on the recommendations of the SESA. Such SESA recommendations must be in accordance with guidelines established in advance by the Certifying Officer.

b. Limited review processing shall apply to applications which offer the prevailing wage, have no special requirements or job duties, do not exceed the Specific Vocational Preparation level assigned to the job, and have no applicant availability or a few applicants who clearly do not meet the job's requirements.

c. Applications may be designated for limited review processing only after completion of recruitment. The SESA will assemble an application package for regional processing as follows and affix a limited review code (''LR'') to the file:

- One copy of the ETA 7147—State Agency Transmittal.
- One copy of the G–28—Notice of Appearance of Attorney.
- Two sets of the ETA 750, Parts A & B, Application for Alien Employment Certification and one backup copy of Part B.
- One copy of correspondence and other documentation.
- One copy of the SESA Job Order.
- One copy of the Internal Job Posting.
- One copy of all three Advertisements.
- One copy of the Recruitment Results.
- One copy of the Resumés.

d. For the most part, applications which meet the limited review criteria will be expedited for approval when they are received in the Regional Office. Some applications will be randomly selected for review for quality control and SESA training purposes.

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Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects; Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects

AGENCY: Department of Education.

SUMMARY: The Secretary announces final funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to: rehabilitation for persons with long-term mental illness; rehabilitation for children with disabilities with special health care needs; policies affecting the provision of services to children with emotional disturbances and their families; and improving services and supports to children with emotional disturbances and their families. The notice also contains final priorities for two DRRPs related to: rehabilitation for women with disabilities; and analysis of service delivery and policies affecting emerging disability populations. The final priorities refer to NIDRR's proposed Long-Range Plan (LRP). The proposed LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

On February 25, 1999 the Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 9422). The Department of Education received 40 letters commenting on the notice of proposed priorities by the deadline date. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows. Other substantive issues are discussed under the priority in which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Rehabilitation Research and Training Centers

Priority 1: Rehabilitation for Persons With Long-Term Mental Illness

Comment: The RRTC should focus on the role of conflict resolution skills in the recovery of individuals with long-term mental illness.

Discussion: Under the first required activity, an applicant could propose to investigate the role of conflict resolution skills in the recovery of individuals with long-term mental illness. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to investigate the role of conflict resolution skills in the recovery of individuals with long-term mental illness.

Changes: None.

Comment: The RRTC should be required to identify and evaluate interventions that promote the functioning of single parent families in which the parent has a history of mental illness.

Discussion: The purpose of the priority is to address the employment status of persons with LTMI and investigate the effectiveness of functional recovery. Within that context, an applicant could propose to place a special emphasis on individuals with long-term mental illness who are single parents. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to place a special emphasis on individuals with long-term mental illness who are single parents.

Changes: None.

Priority 2: Rehabilitation for Children With Disabilities With Special Health Care Needs

Comment: Thirty-three commenters urged NIDRR to establish an RRTC on Pediatric Trauma and fund a National Pediatric Trauma Registry (NPTR).

Discussion: After consulting with other agencies carrying out related pediatric research and reviewing the research portfolios of current NIDRR grantees that carry out pediatric research, NIDRR will consider establishing an RRTC on Pediatric Trauma. After conducting a formal evaluation of the current NPTR, NIDRR will consider establishing a new NPTR.

Changes: None.

Comment: The RRTC should address the healthcare access problems of children with Chronic Fatigue Syndrome, fibromyalgia, Lyme disease, or autoimmune diseases.

Discussion: The priority includes a definition of children with disabilities with special health care needs as having a chronic physical, developmental, behavioral, or emotional condition that also requires health and related services of a type or amount beyond that required by children generally. The RRTC could address the healthcare access problems of children with Chronic Fatigue Syndrome, fibromyalgia, Lyme disease, or autoimmune diseases if their condition also requires health and related services of a type or amount beyond that required by children generally.

Changes: None.

Comment: One commenter questioned the appropriateness of the target population and asked for a clarification. The commenter asked if it was necessary to include children with serious emotional conditions in this RRTC in light of the two RRTCs related to children with serious emotional disturbances. In addition, the commenter asked for clarification regarding the age range of the target population, the importance of the onset of disability, and the inclusion of children who are institutionalized.

Discussion: The two RRTCs related to children with serious emotional disturbances will not address the healthcare issues that are addressed by this RRTC.

In terms of the target population, NIDRR prefers to give applicants the discretion to propose the characteristics of the target population who meet the definition in the priority of children disabilities with special health care needs. The peer review process will

evaluate the merits of the proposed target population.

All children, including those who are institutionalized, who meet the definition of children with disabilities with special health care needs, should be included in the target population.

Changes: None.

Comment: One commenter questioned the utility of requiring the RRTC to coordinate with the Rehabilitation Engineering Research Center (RERC) on Telerehabilitation.

Discussion: The RRTC is required to assess the effectiveness and appropriateness of using telerehabilitation to provide health care services to children in remote settings. The RERC on Telerehabilitation should be instrumental in successfully carrying out this research.

Changes: None.

Priority 3: Policies Affecting the Provision of Services to Children with Emotional Disturbances and Their Families

Comment: The shared Introduction that prefaces this priority and the priority on improving services and supports to children with emotional disturbances and their families should focus on strengths, family-centered and family-driven planning, implementation, and evaluation, as well as an injunction that all aspects of service delivery should be culturally competent.

Discussion: The introductions to these, and other priorities, include only that background information that is necessary in order for potential applicants to propose to fulfill the purpose of the priority. NIDRR believes that the principles articulated in the comment are valuable, but not essential.

Changes: None.

Comment: This RRTC and the RRTC on improving services and supports to children with emotional disturbances and their families should include individuals from a range of diverse backgrounds and engage family members in all of the work they perform.

Discussion: The description and general requirements of the RRTC include provisions that are consistent with the commenter's suggestions. They state that NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training, and that each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center. No further requirements are necessary.

Changes: None.

Comment: The first and third required activities should include family-run organizations.

Discussion: An applicant could propose to address the role of family-run organizations within the first and third required activities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to address the role of family-run organizations within the first and third required activities.

Changes: None.

Priority 4: Improving Services and Supports to Children With Emotional Disturbances and Their Families

Comment: The first required activity should acknowledge the importance of family participation at the case level, in service planning, implementation, and planning, as well as in policy making.

Discussion: An applicant could propose to stress the importance of family participation in carrying out the first required activity. The peer review process will evaluate merits of the proposal. NIDRR has no basis to require all applicants to stress the importance of family participation in carrying out the first required activity.

Changes: None.

Comment: Two commenters indicated that the fourth required activity should include issues related to collaboration in addition to issues on communication skills.

Discussion: An applicant could propose to approach communication skills broadly so as to include issues related to collaboration. The peer review process will evaluate merits of the proposal. NIDRR has no basis to require all applicants to approach communication skills broadly so as to include issues related to collaboration.

Changes: None.

Comment: The RRTC should be required to describe the evolution and development of family-run organizations and their impact on the design, development, delivery, and evaluation of services and supports of children, youth, and families.

Discussion: An applicant could propose to carry out the research that the commenter has suggested as part of their research under the first or second required activities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to describe the evolution and development of family-run organizations and their impact on the design, development, delivery, and evaluation of services and supports of children, youth, and families.

Changes: None.

Comment: The priority refers to the Office of Policy and Planning in the Department of Health and Human Services. Is this reference correct?

Discussion: No. The correct reference should be the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services.

Changes: The priority has been revised to refer to the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services.

Priority 5: Improved Economic Outcomes for Women With Disabilities

Comment: The DRRP should include some international focus, evaluate a range of domestic economic development models, identify technological obstacles and solutions, and focus on girls and young women from a variety of ethnic backgrounds, economic strata, and disability groups.

Discussion: An applicant could propose to include all of the commenter's suggestions in the research to be carried out by the DRRP. The peer review process will evaluate the merits of the proposals. NIDRR has no basis to require all applicants to include some international focus, evaluate a range of domestic economic development models, identify technological obstacles and solutions, and focus on girls and young women from a variety of ethnic backgrounds, economic strata, and disability groups.

Changes: None.

Comment: The DRRP should identify jobs that can accommodate the special problems of persons with relapsing-remitting illnesses and cognitive problems, such as Chronic Fatigue Syndrome (CFS), multiple sclerosis, fibromyalgia, lupus, and rheumatoid arthritis.

Discussion: The DRRP is not required to identify jobs for any disability group. However, as part of the research carried out under the second and third required activity, an applicant could propose to carry out the research suggested by the commenter. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to identify jobs that can accommodate the special problems of persons with relapsing-remitting illnesses and cognitive problems, such as CFS, multiple sclerosis, fibromyalgia, lupus, and rheumatoid arthritis.

Changes: None.

Priority 6: Analysis of Service Delivery and Policies Affecting Emerging Disability Populations

Comment: How will the DRRP determine what disabilities qualify as ''emerging,'' and specifically, does NIDRR consider CFS an emerging disability?

Discussion: As indicated in the Introduction, NIDRR's proposed LRP provides a description of characteristics of emerging disability populations. Applicants will use that description to propose those disabilities that will be addressed by the DRRP. An applicant could propose to include CFS as an emerging disability. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to consider CFS an emerging disability.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General Requirements

The following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process.

Each RRTC must provide: (1) training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

Each RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

Each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

The RRTC must coordinate with other entities carrying out related research or training activities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this priority.

Priority 1: Rehabilitation for Persons With Long-Term Mental Illness

Introduction

Chapter Two of NIDRR's proposed LRP addresses the employment status of persons with mental illness (63 FR 57197–57198) and Chapter Six (63 FR 57208) sets forth the background to research addressing their rehabilitation needs within the framework of community integration. The National Institute of Mental Health estimates that there are over 3 million adults ages 18–69 who have a serious mental illness (Manderscheid, R.W. & Sonnenschein, M.A. (Eds.), Mental Health, United States 1992 U.S. Department of Health and Human Services, Rockville, MD; DHHS Publication No. (SMA) 92–1942).

The psychiatric rehabilitation model includes recovery as an outcome for persons experiencing long-term mental illness (LTMI). The recovery paradigm is defined as the personal, unique process of changing one's attitudes, values, skills, and roles to maximize personal functioning (Psychiatric Rehabilitation Services, Inc., http://www.psychdismgmt.com/index.html). It refers to persons with LTMI regaining social function and developing new meaning and purpose in their lives through understanding and accepting their disability, taking personal responsibility, developing hope, and effectively utilizing support. There is a

need to determine the effectiveness of the recovery approach to rehabilitation for persons with LTMI.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC on rehabilitation for persons with LTMI to address the employment status of persons with LTMI and investigate the effectiveness of functional recovery. The RRTC must:

(1) Investigate individual and environmental factors that facilitate or hinder recovery, and describe the recovery process;

(2) Investigate whether the recovery process differs for individuals based on diagnosis, ethnicity, and history of physical or psychological abuse;

(3) Investigate the relationships between recovery and job training, education, and employment; and

(4) Investigate the impact of various alternative health care practices and wellness activities such as exercise, diet, meditation, peer support, and personal assistance services on employment outcomes for persons with LTMI.

Priority 2: Rehabilitation for Children With Disabilities With Special Health Care Needs

Introduction

Chapter Four of NIDRR's proposed LRP addresses health care and health care systems for persons with disabilities (63 FR 57202–57203). For the purposes of this proposed priority, children with disabilities with special health care needs have a chronic physical, developmental, behavioral, or emotional condition and also require health and related services of a type or amount beyond that required by children generally.

As the trend toward enrolling Medicaid-eligible populations in capitated healthcare delivery programs (e.g., health maintenance organizations) continues, States have begun to address the challenges of providing coordinated, high quality health care to high cost populations. Children with disabilities with special health care are among those high cost populations because they tend to need multiple services, advanced technologies, and specialized services. Research is needed to determine whether cost control strategies are preventing children with disabilities with special health care needs from receiving access to the range of specialized and support services, and technologies that they need to treat their condition and prevent further disability.

Priority

The Secretary will establish an RRTC to improve rehabilitation outcomes for children with disabilities with special health care needs. The RRTC must:

(1) Investigate access to pediatric rehabilitation, including specialized and support services, and technologies, by children with disabilities with special health care needs;

(2) Analyze the impact of cost control strategies on the provision of health care to children with disabilities with special health care needs;

(3) Identify best practices in the transition from pediatric to adult medical care in capitated managed care settings;

(4) Assess the effectiveness and appropriateness of using telerehabilitation to provide health care services to children with disabilities with special health care needs in remote settings; and

(5) Identify training issues for service providers who diagnose and assess the assistive technology needs of children with disabilities who have special health care needs.

In carrying out these purposes, the RRTC must coordinate with the Maternal and Child Health Bureau and the Office of Policy and Planning in the Department of Health and Human Services, the Office of Special Education Programs, the Federal Interagency Coordinating Council, and the Rehabilitation Engineering Research Center on Telerehabilitation.

Two Priorities Addressing Children With Emotional Disturbances

Chapter Seven of NIDRR's proposed LRP (63 FR 57213) addresses public policy issues for people with disabilities including the integration of service systems. Children with emotional disturbances and their families are likely to receive services from a number of social service systems. Gaining a better of understanding of the policies that serve as the foundation for these services, and their interaction, may contribute to improvements in the quality of services.

Approximately 3.5 to 4 million youngsters (from ages 9–17) are estimated to have an emotional disturbance accompanied by substantial functional impairment (Center for Mental Health Services, Publication SMA96–308, Chapter 6, 1996).

Priority 3: Policies Affecting the Provision of Services to Children With Emotional Disturbances and Their Families

Introduction

Many children with emotional disturbances receive services over extended periods of time from multiple agencies including child welfare and protective services agencies, schools and local educational agencies, and elements of the juvenile justice system. Coordination of the delivery of services from multiple agencies is a difficult undertaking that may be facilitated by ensuring that the public policies authorizing the services are compatible and promote coordination and collaboration.

The costs, or part of the costs, of mental health services provided to children with emotional disturbances are routinely covered by insurance programs. Research is needed to understand the impact of changes in the field of health care financing on mental health services provided to children with emotional disturbances.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC to improve policies affecting the provision of services to children with emotional disturbances and their families. The RRTC must:

(1) Develop an analytical framework for assessing: family characteristics and policies, structure of service systems, service delivery processes, interagency coordination and collaboration, and outcomes for children with emotional disturbances and their families;

(2) Using the methodology developed above, determine the effectiveness of specific policies, implementation strategies, service delivery procedures, and coordination practices in meeting the needs of children with emotional disturbances and their families;

(3) Identify the impact of specific characteristics of interagency collaboration and coordination on the provision of services to children with emotional disturbances and their families;

(4) Assess the impact of specific policies on access to services of children with emotional disturbances from diverse cultural, linguistic, ethnic and socioeconomic backgrounds; and

(5) Investigate the impact of changes in health care financing, particularly the State Children's Health Insurance Program, on mental health services

provided to children with emotional disturbances.

In carrying out these purposes, the RRTC must:

- Coordinate with the Center for Mental Health Services and the Office of Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Office of Special Education Programs, and the Federal Interagency Coordinating Council; and
- Establish practical statistical methodologies and measurement tools that specifically assess the policies affecting families of children with serious emotional disturbance.

Priority 4: Improving Services and Supports to Children With Emotional Disturbances and Their Families

Introduction

Families of children with emotional disturbances face multiple challenges and need appropriate services for their children as well as supportive services for the family. Early identification of an emotional disturbance is beneficial not only to the child, but also to the family who must learn to address the impact of their child's behavior on the family and to navigate various service systems. In order to address family needs and be successful advocates for their child, families must learn to communicate effectively with providers. At the same time, service providers must have the ability to understand families' needs and respond positively to those needs.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC to improve services and supports for children with emotional disturbances and their families. The RRTC must:

(1) Develop and evaluate service delivery models for children with an emotional disturbance and their families, including family centered and culturally sensitive services;

(2) Define and evaluate the formal and informal components of family support and identify successful family support interventions;

(3) Identify and evaluate early intervention strategies; and

(4) Identify, develop, and evaluate communication skills to enable families and service providers to communicate effectively with each other.

In carrying out these purposes, the RRTC must coordinate with the Center for Mental Health Services and the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Office of Special Education Programs, and the Federal Interagency Coordinating Council.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet these priorities.

Priority 5: Improved Economic Outcomes for Women With Disabilities

Introduction

Chapter One of NIDRR's proposed LRP (63 FR 57192) addresses the need for research to explore new ways of measuring and assessing disability in context, taking into account the effects of physical, policy, and social environments, and the dynamic nature of disability over the life span and across environments. Among the objectives for persons with disabilities are satisfactory employment, economic self-sufficiency, and the opportunity to participate in mainstream community life.

There is evidence that the economic conditions of women with disability are comparatively poor. Disabled women have lower levels of educational attainment, lower employment rates regardless of education, and lower earnings. Also, they are more likely to be dependent on public income supports, to live in poverty, and to be single parents at some time during their lives, with responsibility for the care and support of children (*Introduction to Disability*, McColl, M. and Bickenbach, J., Eds., W.B. Saunders Co., 1998).

NIDRR expects this project to contribute to our understanding of strategies that women with disabilities can use to achieve greater economic independence. The project may focus on ways to maximize earnings from work, self-employment, and financial life planning. In the effort to maximize earnings, some women with disabilities at various educational levels are setting career goals, attaining appropriate training and education throughout the life span, and developing networks and support systems to improve their employment outcomes. Some disabled women, especially those with young children, are now considering the advantages and disadvantages of home-based employment.

Priority

The Secretary will establish a DRRP to evaluate the economic status of women with disabilities and identify strategies to improve employment outcomes and economic independence.

(1) Analyze, using existing data sources, the employment conditions and economic status of disabled women, including uses of public and private income supports;

(2) Analyze the skills and conditions that promote lifelong economics self-sufficiency for disabled women;

(3) Identify innovative strategies to improve employment outcomes, including earnings, career progression, and benefits packages, for women with disabilities; and

(4) Identify innovative strategies, including peer support strategies, to assist disabled women to develop plans to increase lifelong economic security.

Priority 6: Analysis of Service Delivery and Policies Affecting Emerging Disability Populations

Introduction

Chapter 2 of NIDRR's proposed LRP (63 FR 57196–57198) describes what has become known as the ''emerging universe of disability.'' Demographic, social and environmental trends affect the prevalence and distribution of various types of disability as well as the demands of those disabilities on social policy and service systems. Studies of such emergent disabilities address factors that include: (1) changing etiologies for existing disabilities; (2) growth in segments of the population with higher prevalence rates for certain disabilities, including the aging of the population of individuals with disabilities; (3) the consequences of

changes in public policy and in health care services and technologies; and (4) the appearance of new disabilities.

Priority

The Secretary will establish a DRRP to improve the provision of services to persons with emerging disabilities. The DRRP must:

(1) Evaluate the implications of emerging disabilities for service systems and social policy; and

(2) Assess the particular needs, with attention to identifying unmet needs of the emerging universe for independent living services, assistive technology services, community-based supports, and other services such as vocational rehabilitation, special education, medical and psychosocial rehabilitation, income supports, and medical assistance.

In carrying out these purposes the DRRP must:

- Use a range of existing data sources to estimate and describe the emerging universe of disability and predict future trends;
- Assess the feasibility of using existing, or establishing new surveillance systems in order to improve the accuracy of predicting changes in the emerging universe;
- Identify etiologies, including environmental or social factors, associated with these emerging disabilities;
- Design a practical and prioritized agenda for a future research program to address gaps in service delivery, to develop interventions and to develop policy approaches to address the disability-related problems of various segments of the emerging universe; and
- Convene a conference to discuss the Center's findings and their implications, with an emphasis on dissemination of results of the conference to appropriate NIDRR grantees.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: April 28, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–11155 Filed 5–3–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program

CFDA Numbers: 84.133A and 84.133B

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1999 DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84–133A–4, Improved Economic Outcomes for Women with Disabilities	June 18, 1999	1	$200,000	36
84–133A–6, Analysis of Service Delivery and Policies Affecting Emerging Disability Populations.	June 18, 1999	1	250,000	36

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Disability and Rehabilitation Research Projects

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for a project on improved economic outcomes for women with disabilities and a project on analysis of service delivery and policies affecting emerging disability populations under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (40 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (10 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (4 points); and

(E) The data analysis methods are appropriate (4 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (7 points).

(d) *Design of dissemination activities (5 points total).*

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(e) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(f) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in

disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(j) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTER, CFDA NO.84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84–133B–11, Rehab for Persons w/LTMI	June 18, 1999	1	$750,000	60
84–133B–12, Rehab for Children w/Special Needs	June 18, 1999	1	700,000	60
84–133B–7, Policies Affecting Children w/SED	June 18, 1999	1	725,000	60
84–133B–14, Improving Services to Children w/SED	June 18, 1999	1	725,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Rehabilitation Research and Training Center

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for RRTCs on: (1) Rehabilitation for persons with long-term mental illness; (2) rehabilitation for children with disabilities with special health care needs; (3) policies affecting the provision of services to children with emotional disturbances and their families; and (4) improving services and supports to children with emotional disturbances and their families under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are

accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals

with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) a one-page abstract;

(2) an Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages for RRTC applications and 75 pages for Project applications, double-spaced (no more than 3 lines per vertical inch) 8½ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room # 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW, Switzer Building, 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 760–762.

Dated: April 28, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in

this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel For Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
   Legal Name: _____
   Address: _____
   _____
   City _____ State _____ County _____ ZIP Code + 4 _____ - _____

   Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

3. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ] ➡ Title: _____

4. Project Director: _____
   Address: _____
   City _____ State _____ ZIP Code + 4 _____ - _____
   Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
   E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
   (If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?
   ☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
   ☐ No *(If "No," check appropriate box below.)*
   ☐ Program is not covered by E.O. 12372.
   ☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
    a. If "Yes," Exemption(s) #: [ ] **OR** b. Assurance of Compliance #: [ ]
    c. IRB approval date: _____ { ☐ Full IRB **or** ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative | Date: ___/___/_____

REV. 1/12/99 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a-fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ (Signature)

_____ (Date)

_____ (Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–11156 Filed 5–3–99; 8:45 am]
BILLING CODE 4000–01–C

federal register

Tuesday
May 4, 1999

Part VII

Department of Commerce

Bureau of Export Administration

15 CFR Part 746

Exports to Serbia; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990422104–9104–01]

RIN 0694–AB91

Exports to Serbia

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule

SUMMARY: In his address to the nation on March 24, 1999, President Clinton announced that the Armed Forces of the United States had joined those of our NATO allies in air strikes against Serbian forces responsible for brutal attacks on ethnic Albanians in the province of Kosovo. This rule imposes a license requirement for exports and reexports to Serbia of all items subject to the Export Administration Regulations (EAR).

EFFECTIVE DATE: This rule is effective May 4, 1999.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

In response to the Serbian government's continued ethnic cleansing in its Kosovo province and its rejection of the proposed peace agreement accepted by the Kosovars, NATO (including the United States) has taken military action. This action is intended to deter the mass killing and dislocation of ethnic Albanians in Kosovo and to prevent a widening of the conflict.

In Resolution 1203 (adopted on October 24, 1998), the United Nations Security Council (UNSC) expressed alarm at what it described as the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe. Previously, in Resolution 1160 of March 3, 1998, the UNSC had imposed an embargo on the sale of arms and related materials to the Federal Republic of Yugoslavia.

On July 14, 1998, BXA implemented an embargo on arms and arms-related items in the Export Administration Regulations (EAR) that applied to Serbia and Montenegro. The arms embargo continues in effect. This rule imposes an additional license requirement on exports and reexports to Serbia of all items subject to the EAR. Applications will be reviewed on a case-by-case basis, with a presumption of denial for applications for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use. No License Exceptions are available for Serbia, except that items consigned to and for use by personnel and agencies of the U.S. Government may be shipped under License Exception GOV, and temporary exports or reexports by the accredited news media may be made under License Exception TMP. This rule does not affect Montenegro.

This action is taken consistent with the provisions of the Export Administration Act (EAA) and after consultation with the Secretary of State. BXA submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on April 30, 1999.

Although the EAA expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121, August 17, 1998).

Saving Clause

Shipments of items removed from License Exception or NLR authorizations as a result of this regulatory action that were en route aboard a carrier to a port of export, on dock for loading aboard an exporting carrier, on lighter, or laden aboard an exporting carrier on May 4, 1999, pursuant to actual orders for export to that destination in Serbia, may proceed to that destination under the previous License Exception or NLR authorization provisions so long as they have been exported from the United States before May 11, 1999. Any such items not actually exported before midnight May 11, 1999, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 746 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 746—[AMENDED]

1. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p.

917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. Section 746.9 is revised to read as follows:

§ 746.9 The Federal Republic of Yugoslavia (Serbia and Montenegro).

The Department of Commerce maintains a comprehensive embargo on exports and reexports to Serbia. Additionally, a United Nations mandated arms embargo applies to certain items destined to the Federal Republic of Yugoslavia (Serbia and Montenegro).

(a) *License requirements.* (1) *Serbia.* You will need a license to export or reexport all items subject to the EAR to Serbia, except as specified in paragraph (c) of this section. This requirement does not apply to Montenegro.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Under Executive Order 12918 of May 26, 1994 (3 CFR, 1994 comp., p. 899) (which authorizes the Secretary of State and the Secretary of Commerce, under section 5 of the United Nations Participation Act and other authorities available to the respective Secretaries, to take all actions necessary to implement any arms embargo mandated by resolution of the United Nations Security Council), and in conformity with United Nations Security Council (UNSC) Resolution 1160 of March 31, 1998, an embargo applies to the sale or supply to the Federal Republic of Yugoslavia of arms and related materiel of all types and regardless of origin, such as weapons and ammunition, military vehicles and equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to the Federal Republic of Yugoslavia (Serbia and Montenegro) from the United States of embargoed items, as listed in paragraphs (a)(2)(i) and (ii) of this section. You will also need a license for the sale, supply, export or reexport to the Federal Republic of Yugoslavia (Serbia and Montenegro) of such items by any United States person in any foreign country or other location. (Reexport controls imposed under this paragraph (a)(2) apply only to reexports by U.S. persons. Reexport controls on U.S.-origin items to the Federal Republic of Yugoslavia (Serbia and Montenegro) set forth in other parts of the EAR remain in effect.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to the Federal Republic of Yugoslavia (Serbia and Montenegro) any such items. These requirements apply to embargoed items specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the ''License Requirements'' section of the applicable ECCN.

(ii) Items described by ECCNs ending in ''018''; and 0A982, 0A984, 0A985, 0A986, 0A988, 0A989, 0B986, 0E984, 1A005, 1C998, 2A993, 6A002.a.1, a.2, a.3, b and c, 6A003.b.3 and b.4, 6E001, 6E002, and 9A991.a.

(3) *Date of embargo.* The licensing requirements in paragraph (a)(2) of this section were effective on July 14, 1998.

(b) *Licensing policy.* (1) *Serbia.* Applications for export or reexport of all items subject to the EAR to Serbia will be reviewed on a case-by-case basis, with a presumption of denial for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Applications for export or reexport of all items listed in paragraphs (a)(2)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 1160, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to July 14, 1998, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(c) *License Exceptions.* Items consigned to and for use by personnel and agencies of the U.S. Government may be exported or reexported to Serbia under License Exception GOV (see § 740.11(b)(2) of the EAR), and temporary exports or reexports by the news media may be made to Serbia under License Exception TMP (see § 740.9(a)(2)(viii) of the EAR). No other License Exceptions are available for Serbia.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains related controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120–130). You should also contact the Department of the Treasury's Office of Foreign Assets Control concerning any restrictions which might apply to U.S. persons involving financial transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro).

Dated: April 30, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–11304 Filed 4–30–99; 4:17 pm]

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