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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–79–AD; Amendment 39–10472; AD 98–08–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Equipped With General Electric (GE) CF6–80C2 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing the existing placard on the door of the fueling control panel with a new placard, or replacing all dribble flow fuel nozzles (DFFN's) with standard fuel nozzles, which terminates the requirements for a placard and AFM revision. This amendment continues these requirements and adds additional airplanes to the applicability. This amendment is prompted by a report of an engine flameout due to the use of JP–4 or Jet B fuel during certification testing on an engine with DFFN's installed. The actions specified in this AD are intended to prevent such engine flameouts and consequent engine shutdown.

DATES: Effective May 1, 1998.

The incorporation by reference of certain publications, as listed in the regulations, was previously approved by the Director of the Federal Register as of November 12, 1997 (62 FR 55728, October 28, 1997).

Comments for inclusion in the Rules Docket must be received on or before June 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: Dionne Stanley, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On October 17, 1997, the FAA issued AD 97–22–04, amendment 39–10175 (62 FR 55728, October 28, 1997), applicable to certain Boeing Model 747 and 767 series airplanes, to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing the existing placard on the door of the fueling control panel with a new placard, or replacing all dribble flow fuel nozzles (DFFN's) with standard fuel nozzles, which terminates the requirements for a placard and AFM revision. That action was prompted by a report indicating that, during certification testing, a General Electric CF6–80C2 engine with DFFN's installed experienced flameout due to the use of JP–4 or Jet B fuel. The actions required by that AD are intended to prevent such engine flameouts and consequent engine shutdown.

Restatement of the Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 747–11A2052 (for Model 747 series airplanes) and 767–11A0031 (for Model 767 series airplanes), both dated September 11, 1997, which describe procedures for removing the existing placard on the door of the fueling control panel and replacing it with a new placard that prohibits the use of JP–4 and Jet B fuels (wide cut fuels).

Additionally, these alert service bulletins describe procedures for removing the DFFN's and replacing them with standard fuel nozzles. Accomplishment of this replacement on the operator's entire fleet eliminates the need for a placard that prohibits the use of wide cut fuels.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design that are equipped with DFFN's, this AD is being issued to continue to require revisions to the FAA-approved AFM to prohibit the use of wide cut fuels. This AD also is being issued to continue to require either replacement of the existing placard on the door of the fueling control panel with a new placard, or replacement of all DFFN's with standard fuel nozzles (the latter option terminates the requirements for an AFM revision and a new placard). In addition, this amendment expands the applicability to include all Boeing Model 747 and 767 series airplanes with GE CF6–80C2 engines and those airplanes delivered subsequent to the issuance of AD 97–22–04. These actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between This AD and the Previous AD

Operators should note that, in addition to the list of effective airplanes referenced in Boeing Alert Service Bulletin 747–11A2052 (for Model 747 series airplanes) or Boeing Alert Service Bulletin 767–11A0031 (for Model 767 series airplanes), both dated September 11, 1997, this amendment expands the applicability to all Boeing Model 747 and 767 series airplanes equipped with General Electric CF6–80C2 engines, regardless of whether or not the airplanes are equipped with DFFN's. The FAA finds that there is a likelihood that operators with a mixed fleet (e.g., airplanes equipped with GE CF6–80C2 engines with DFFN's installed and those without DFFN's installed) could inadvertently use the incorrect type of fuel. To eliminate this likelihood, the

FAA requires that if any airplane in an operator's fleet is equipped with GE CF6–80C2 engines with DFFN's installed, the use of wide-cut fuels is prohibited for the entire fleet. The previous AD was applicable only to airplanes having GE CF6–80C2 engines equipped with DFFN's; this rule is applicable to all airplanes having GE CF6–80C2 engines. The applicability is expanded in this AD to ensure that each specific operator uses the correct type of fuel throughout its entire fleet. Additionally, airplanes that were released from production into service subsequent to the release of these service bulletins and that were not covered by AD 97–22–04 are now included in the applicability of this amendment.

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 98–NM–79–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 removing amendment AD 97–22–04, 39–10175 (62 FR 55728, November 12, 1997), and by adding a new airworthiness directive (AD), amendment 39–10472, to read as follows:

98–08–23 Boeing: Amendment 39–10472. Docket 98–NM–79–AD. Supersedes AD 97–22–04, amendment 39–10175.

Applicability: All Model 747 and 767 series airplanes having General Electric CF6–80C2 engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if 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 engine flameouts due to the use of JP–4 or Jet B fuel on certain engines with dribble flow fuel nozzles (DFFN's) installed and consequent shutdown, accomplish the following:

Restatement of Requirements of AD 97–22–04

(a) For airplanes with DFFN's installed: Within 14 days after November 12, 1997 (the effective date of AD 97–22–04), revise Section 1 of the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

(2) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP–4 fuel is prohibited."

(b) For airplanes with DFFN's installed: Within 30 days after November 12, 1997, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, in accordance with either Boeing Alert Service Bulletin 747–11A2052 (for Model 747 series airplanes) or 767–11A0031 (for Model 767 series airplanes), both dated September 11, 1997; as applicable.

(1) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(2) Remove the DFFN's, and replace them with standard fuel nozzles, in accordance

with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraph (a) of this AD may be removed from the AFM and the placard required by paragraph (b)(1) of this AD may be removed from each airplane.

New Requirements of This AD

(c) If a DFFN is installed on any airplane in a specific operator's fleet, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD; in accordance with either Boeing Alert Service Bulletin 747–11A2052 (for Model 747 series airplanes) or Boeing Alert Service Bulletin 767–11A0031 (for Model 767 series airplanes), both dated September 11, 1997; as applicable.

(1) Within 14 days after the effective date of this AD, all airplanes in a specific operator's fleet must revise Section 1 of the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83113 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

(ii) Add the following sentence to paragraph 2 of the Engine Fuel System section: "The use of Jet B and JP–4 fuel is prohibited."

(2) Within 30 days after the effective date of this AD, all airplanes in a specific operator's fleet must accomplish the actions required by paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) Remove the existing placard on the door of the fueling control panel and replace it with a new placard that restricts the use of JP–4 and Jet B fuels (wide cut fuels), in accordance with the applicable alert service bulletin. Or

(ii) Remove the DFFN, and replace it with a standard fuel nozzle, in accordance with the applicable alert service bulletin. When an operator's entire fleet has had all DFFN's replaced with standard fuel nozzles, the AFM revision required by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD may be removed from the AFM, and the new placard required by paragraph (c)(2)(i) of this AD may be removed from each airplane.

(d) Except as provided by paragraph (e) of this AD, if a DFFN is not installed on any airplane in a specific operator's fleet, no further action is required by this AD.

(e) As of the effective date of this AD, no person shall install any DFFN having General Electric part number 9331M72P33, 9331M72P34, or 9331M72P41 on any airplane unless the requirements specified by paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this AD have been accomplished for the operator's entire fleet.

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

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

(g) 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 (except no loading of JP–4 or Jet B fuel).

(h) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–11A2052, dated September 11, 1997, or Boeing Alert Service Bulletin 767–11A0031, dated September 11, 1997; as applicable. The incorporation by reference of these service bulletins was approved previously by the Director of the Federal Register as of November 12, 1997 (62 FR 55728, October 28, 1997). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 1, 1998.

Issued in Renton, Washington, on April 9, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10054 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Procedures in Prior Approval Proceedings

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending its regulations, which govern applications for approval of proposed divestitures, acquisitions, or similar transactions that are subject to Commission review under outstanding orders, and is also making a conforming amendment. The principal changes accomplished by these amendments are to clarify the nature of the materials that will be placed on the public record in prior approval proceedings, to clarify the timing of such placement, and to provide expressly that, in appropriate cases, the Commission may shorten, eliminate, extend or reopen a comment period.

DATES: The amendments are effective April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Marc Winerman, Attorney, Office of the General Counsel, 202–326–2451.

SUPPLEMENTARY INFORMATION:

I. Materials To Be Placed on the Public Record in Prior Approval Proceedings

Amended Rule 2.41(f)(1) replaces the requirement that prior approval applications under that rule be placed on the public record "together with supporting materials." The revised rule explains that applications shall "fully describe the terms of the transaction and shall set forth why the transaction merits Commission approval." It provides for placement on the public record of the application, together with any additional applicant submissions that the Commission directs be placed on the public record.[1] It also delegates to the Director of the Bureau of Competition the authority to direct placement of additional applicant submissions on the public record (subject to confidentiality determinations by the General Counsel).

The rule also clarifies a requirement for placing on the public record any written or oral communication that concerns a prior approval proceeding and that is directed to a Commissioner or "any employee involved in the decisional process." As construed by the Commission, and as amended § 2.41(f)(3) makes explicit, this disclosure requirement applies only to communications between outside parties and Commissioners or their personal staffs. The amended rule also replaces the provision that such disclosures will be made "immediately" with a provision that disclosures will be made "expeditiously."

Section 2.41(f)(5) makes clear that all disclosure requirements under the rule are subject to confidentiality requests. If such requests are denied, the submitter will receive notice before any disclosure of affected information takes place. See also 15 U.S.C. 57b–2(c). Section 2.41(f)(5) also explains that confidentiality requests need not be

[1] Such disclosures would be made to further the goal of the comment period. That goal is to inform the Commission's judgment, and not to confer any substantive rights on submitters. Letter, Donald S., Clark, Secretary (by direction of the Commission), to Robert A. Hammond, Esq., Re: Institute Merieux, S.A. Docket No. C–3301 (April 20, 1992). *Cf. General Motors Corp.*, 103 F.T.C. 58, 63 (1984) (explaining rationale for the public comment period on proposed settlements under Rule 2.34).

resolved before, or at the time of, the application's disposition.

II. Provision To Shorten, Eliminate Extend or Reopen Comment Periods

Amended Rule 2.41(f)(2) provides that the 30-day comment period for a prior approval application may be shortened, eliminated, extended or reopened in appropriate cases. The Commission has occasionally shortened a comment period in the past or decided not to hold one,[2] consistent with case law establishing that agencies can deviate from a rule (like the public comment provision of the prior approval rule) if the rule is not intended to confer important procedural benefits on individuals and if the ends of justice require such action.[3] Under the revised rule, the Commission may determine, in light of the relevant facts, to solicit comment respecting a prior application for less than 30 days, or not at all. For example, the Commission might shorten or eliminate a comment period if it had previously sought comment on a similar or identical proposal. The Commission may also reopen or extend a comment period if, for example, it wishes to elicit comment on materials that are placed on the public record late in the comment period or after the comment period closes.

III. Conforming Amendment to § 4.9

Finally, the Commission has made a conforming amendment to § 4.9, which identifies the materials that are placed routinely on the Commission's public record. Rule 4.9(b)(7)(ii) formerly provided for disclosure of certain specified materials in prior approval proceedings, and Rule 4.9(b)(7)(iii) provided, with some overlap, for disclosure of "requests for advice concerning proposed mergers and materials required to be made public under § 2.41(f)." The Commission has replaced these provisions with a new subsection (ii), providing for disclosures of "[m]aterials required to be made public under § 2.41(f) in connection with applications for approval of proposed divestitures, acquisitions or similar transactions subject to Commission review under outstanding orders."[4] Rule 2.41(f), in turn, specifies the applicant submissions, third party submissions, and Commission responses that routinely will be placed on the public record.

IV. Procedural Matters

The proposed amendments are exempt from the notice and comment requirements of the Administrative Procedure Act as "rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). They do not entail information collection for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information.

Accordingly, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, the Code of Federal Regulations as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 2.41(f) is revised to read as follows:

§ 2.41 Reports of compliance.

* * * * *

(f)(1) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders shall fully describe the terms of the transaction and shall set forth why the transaction merits Commission approval. Such applications will be placed on the public record, together with any additional applicant submissions that the Commission directs be placed on the public record. The Director of the Bureau of Competition is delegated the authority to direct such placement.

(2) The Commission will receive public comment on a prior approval application for 30 days. During the comment period, any person may file formal written objections or comments with the Secretary of the Commission, and such objections or comments shall be placed on the public record. In appropriate cases, the Commission may shorten, eliminate, extend, or reopen a comment period.

(3) If a Commissioner or a member of a Commissioner's personal staff receives a written communication from a person not employed by the agency concerning a proposed transaction that is subject to this section, such communication will be placed on the public record expeditiously after its receipt. If a Commissioner or a member of a Commissioner's personal staff receives an oral communication concerning such a transaction from a person not employed by the Commission, the recipient shall expeditiously prepare and have placed on the public record a memorandum setting forth the full contents of such communication and the circumstances thereof.

(4) Responses to applications under this section, together with a statement of supporting reasons, will be published when made, together with responses to any public comments filed under this section.

(5) Persons submitting information that is subject to public record disclosure under this section may request confidential treatment for that information or portions thereof. Such requests shall be made in accordance with 16 CFR 4.9(c) and the General Counsel will determine whether to grant confidentiality in accordance with 16 CFR 4.9(c). Nothing in this section requires that confidentiality requests be resolved prior to, or contemporaneously with, the disposition of the application.

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.9 is amended by removing paragraph (b)(7)(iii) and revising paragraph (b)(7)(ii) to read as follows:

§ 4.9 The public record.

* * * * *

(b) * * *

(7) * * *

(ii) Materials required to be made public under 16 CFR 2.41(f) in connection with applications for approval of proposed divestitures, acquisitions or similar transactions subject to Commission review under outstanding orders.

* * * * *

[2] E.g., Press Release, "Public Comment Period on Supermarket Divestiture Shortened" (November 4, 1996) (divestiture by Knonklijke Ahold NV). In 1986, the Commission decided not to seek comment on a divestiture application from Flowers Industries, Inc., where the Commission had denied a similar prior application after receiving public comment, and Flowers had then submitted a further application with additional materials.

[3] See *American Farm Lines* v. *Black Ball Freight Service*, 397 U.S. 532, 538–39 (1970); *Onslow County* v. *United States Dep't of Labor*, 774 F.2d 607, 611 (4th Cir. 1985).

[4] The reference to "requests for advice concerning proposed mergers" in former Rule 4.9(b)(7)(ii) has been deleted. It is a vestige of a previously deleted provision in § 1.1 of the Commission's rules. See 54 FR 14072 (1989).

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Pads 3, 32 and 33

Trade Options on the Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rules.

SUMMARY: Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for "trade options." Trade options are off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to" a person or entity within the categories of commercial users specified in the rule, where such commercial user "is offered or enters into the transaction solely for purposes related to its business as such." 17 CFR 32.4(a). Trade options, however, are not permitted on the agricultural commodities which are enumerated in the Commodity Exchange Act (Act). 7 U.S.C. 1a(3).

The Commodity Futures Trading Commission (Commission or CFTC) is removing the prohibition on off-exchange trade options on the enumerated agricultural commodities pursuant to a three-year pilot program. Because it intends to reexamine these rules during and at the conclusion of the pilot program, these rules are being promulgated as interim final rule (interim rules). The interim rules, like the proposed rules, permit only agricultural trade options which, if exercised, will result in delivery of the commodity. Such options may not be resold, repurchased, or otherwise cancelled other than through the exercise or natural expiration of the contract.

Also, the interim rules permit only those entities which handle the commodity in normal cash market channels to solicit, to offer to buy or sell, or to buy or sell such options. Vendors of such options would be required to become registered as agricultural trade option merchants, to report to the Commission on their transactions, to provide their customers with disclosure statements, and to safeguard their customers' premiums. The interim rules substantially streamline requirements contained in the proposed rules, particularly the proposed registration, reporting rules, particularly the proposed registration, reporting and customer fund segregation requirements. The Commission is exempting from the prohibition and these interim rules individuals or entities which meet a substantial financial requirement, as it proposed. Finally, the Commission is removing the prohibition on the offer or sale of exchange-traded options on physicals on these commodities.

CFTC will publish at a late time a document in the **Federal Register** requesting comments on these interim rules.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

A. The Prohibition of Agricultural Trade Options

In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sale of option contracts both on and off exchange in the specific list of agricultural commodities then under regulation.[1] Any commodity not so enumerated was unaffected by the prohibition.

A history of abusive practices and fraud in the offer and sale of off-exchange options in the non-enumerated commodities was one of the catalysts leading to enactment of the Commodity Futures Trading Commission Act of 1974 (1974 Act). The 1974 Act created the Commission, substantially strengthen the Commodity Exchange Act and broadened its scope by bringing all commodities under regulation for the first time. The newly-created CFTC, vested with plenary authority to regulate the offer and sale of commodity options,[2] promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the non-enumerated commodities.[3] This comprehensive framework exempted "trade options" from most of its provisions except for a rule prohibiting fraud (rule 32.9).[4] In contrast, the prohibition on the offer and sale of all options on the enumerated agricultural commodities remained as a consequence of both statutory provision and Commission rule. *See,* 17 CFR 32.2.

However, the attempt to create a regulatory framework to govern the offer and sale of off-exchange commodity options was unsuccessful and was suspended.[5] In 1982, based on the separate, successful pilot program to introduce exchange-traded options on the non-enumerated commodities, Congress eliminated the statutory prohibition on options on the enumerated agricultural commodities.[6] As a consequence, the Commission

[1] The specific agricultural commodities originally regulated under the 1936 Act included, among others, grains, cotton, butter, eggs, and potatoes. Later, fats and oils, soybeans and livestock, as well as others, were added to the list of enumerated agricultural commodities. Commodity Exchange Act of 1936, Public Law No. 74–675, 49 Stat. 1491 (1936). *See,* H. Rep. No. 421, 74th Cong., 1st Sess. 1, 2 (1934); H. Rep. No. 1551, 72d Cong., 1st Sess. 3 (1932). A more complete statement of the statutory and regulatory history of the ban is provided in the Notice of Proposed Rulemaking, 62 FR 59624 (November 4, 1997).

[2] Section 4c(b) of the Act provides that no person "shall offer to enter into, or confirm the execution of, any transaction involving any commodity regulated under this Act" which is in the nature of an option "contrary to any rule, regulation, or other of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe." 7 U.S.C. 6c(b).

[3] 17 CFR part 32. *See* 41 FR 51808 (Nov. 24, 1976) (Adoption of Rules Concerning Regulation and Fraud in Connection with Commodity Option Transactions). *See also,* 41 FR 7774 (February 20, 1976) (Notice of Proposed Rules on Regulation of Commodity Option Transactions); 41 FR 44560 (October 8, 1976) (Notice of Proposed Regulation of Commodity Options).

[4] As noted above, trade options are defined as off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to the categories of commercial users specified in the rule, where such commercial user is offered or enters into the transaction solely for purposes related to its business as such." 41 FR at 51815; rule 32.4(a) (1976). This exemption was promulgated based upon an understanding that commercial users of the underlying commodity has sufficient information concerning commodity markets insofar as transactions related to their business as such, so that application of the full range of regulatory requirements was unnecessary for business-related transactions in options on the non-enumerated commodities. *See* 41 FR 44563, "Report of the Advisory Committee on Definition and Regulation of Market Instruments," appendix A–4, p. 7 (January 22, 1976).

[5] Because of continuing, persistent, and widespread abuse and fraud in their offer and sale, the Commission in 1978 suspended all trading in commodity options, except for trade (and subsequently, dealer) options. 43 FR 16153 (April 17, 1976). Congress later codified the Commission's options ban, establishing a general prohibition against commodity option transactions other than trade and dealer options. Public Law No. 95–405, 92 Stat. 865 (1978).

[6] Public Law No. 97–444, 96 Stat. 2294, 2301 (1983).

initiated a pilot program to permit the reintroduction of exchange-traded options on those agricultural commodities. The Commission declined at that time to permit the trading of the specified agricultural options off-exchange.[7]

B. The Advance Notice of Proposed Rulemaking

On June 9, 1997, the Commission published an advance notice of proposed rulemaking (advance notice) in the **Federal Register** seeking comment on whether it should propose rules to lift the prohibition on trade options on the enumerated agricultural options subject to conditions and, if so, what conditions would be appropriate (62 FR 31375).[8] In order to focus comment on the relevant issues, the advance notice invited commenters to respond to 30 specific questions.

The Commission received a total of 76 comment letters from 82 commenters in response, almost evenly divided between those in favor and those opposed to lifting the ban. In addition to the written comments, the Commission received oral and written statements during two public field meetings at which members of the public had an opportunity to address the Commission and to answer its questions regarding these issues. One of the meetings was held in Bloomington, Illinois, and the other was held in Memphis, Tennessee. A third informational briefing was held in conjunction with a general membership meeting of the National Cattlemen's Beef Association. Generally, speakers at these events reflected the range of views expressed in the written comments and were likewise equally divided in their support or opposition to lifting the prohibition on agricultural trade options.[9]

Many of the comments responding to the advance notice expressed the view that the potential risk of permitting trade options clearly outweighed any benefit which they might provide. These commenters typically assumed that agricultural trade options would be offered under the same level of regulation currently applicable to other trade options.[10] An approximately equal number of commenters expressed the view that the prohibition on trade options should be lifted, particularly in response to the new challenges agriculture faces as a result of changes in government programs. The vast majority of commenters, both those favoring and opposing lifting the prohibition on agricultural trade options, urged caution.

C. The Proposed Rules

The Commission, based upon the analysis in the Division's study, the comments responding to the advance notice and the commentary presented during its field meetings, proposed rules establishing a pilot program to permit the offer and sale of trade options subject to a number of strict regulatory conditions. 62 FR 59624. The Commission's proposed rules were based on its evaluation of the likely risks associated with lifting the prohibition on agricultural trade options, the likely immediate uses for agricultural trade options and the level of regulation appropriate to both. The Commission proposed initially to include within the pilot program options between commercial parties in the normal merchandising chain for the underlying commodity, the exercise of which would require delivery from one party to the other either by immediate transfer of title or by transfer of a forward contract commitment. 62 FR 59628.

The Commission further proposed to require vendors of agricultural trade options to register as agricultural trade options merchants and their sales forces to register as associated persons. The Commission proposed a minimum net worth requirement of $50,000 for registration as an agricultural trade option merchant and passing a proficiency test for individuals to be registered as an associated person. As proposed, agricultural trade option merchants also would have been required to keep records, to report to the Commission and to disclose risks to customers. The Commission also proposed several restrictions on agricultural trade option contracts' permissible structure and use.

Four hundred forty-eight commenters responded to the notice of proposed rulemaking, submitting a total of 441 comment letters to the Commission. Commenters remain divided on whether the Commission should lift the prohibition on agricultural trade options. Twelve commenters, including among them an agricultural marketing cooperative, two exchanges and a risk-management firm opposed lifting the prohibition in any form. In their view, existing exchange-traded products are adequate to manage agricultural risk, and trade options would merely replicate existing exchange products, but in a less safe environment. The remaining commenters supported lifting the prohibition, but differed in their assessment of the conditions proposed by the Commission.

Of those supporting lifting the prohibition, three agreed fully with the Commission's proposed rules. They included an association of introducing brokers and two producer associations. The remaining commenters opposed to varying degrees the conditions proposed by the Commission. Twenty-four comment letters submitted by producer associations, other agricultural associations and agribusinesses opposed as unduly restrictive or burdensome most, if not all, of the proposed rules.[11] Others took exception, or offered suggestions relating, to specific rule provisions. Two United States Senators suggested that the pilot program be modified to permit cash settlement of option contracts and not to limit potential vendors to those able to take delivery of the commodity.

II. The Interim Rules

A. Over-all Structure

1. Pilot Program

Based upon thorough and careful consideration of the comments to the notice of proposed rulemaking, the responses to the advance notice of proposed rulemaking, the written and oral statements provided at the field hearings and the Division's study, the Commission is promulgating interim rules establishing a three-year pilot program to permit the trading of agricultural trade options subject to the conditions discussed below. A number

[7] 48 FR 46797 (October 14, 1983). Although the Commission noted that "there may be possible benefits to commercials and to producers from the trading of these 'trade' options in domestic agricultural commodities," it determined that "in light of the lack of recent experience with agricultural options and because the trading of exchange-traded options is subject to more comprehensive oversight," "proceeding in a gradual fashion by initially permitting only exchange-traded agricultural options" was the prudent course. *Id.* at 46800.

[8] The Commission based the advance notice on a study by the Commission's Division of Economic Analysis (Division). The complete text of that study, entitled "Policy Alternatives Relating to Agricultural Trade Options and Other Agricultural Risk-Shifting Contracts," was forwarded to the Commission by the Division on May 14, 1997. It is available through the Commission's Internet site at http://www.cftc.gov/ag8.htm.

[9] Transcripts of the proceedings at all three events were included in the Commission's comment file and are available through the Commission's internet web site.

[10] Currently, trade options and those offering them are subject only to regulations regarding fraud. *See*, 17 CFR 32.4.

[11] The Commission also received 395 identical letters from individual producers opposing the proposed rules on the grounds that they result "in the most extensive, far reaching regulatory requirements ever imposed on cash grain marketing contracts. * * * mak[ing] it virtually impossible for my local grain company to make these contracts available. * * *"

of commenters expressed concern that a three-year pilot program might discourage the Commission from evaluating the interim rules and considering their amendment until the conclusion of the full three-year pilot period. To the contrary, however, the Commission views the pilot program as an opportunity to monitor and to assess the efficacy of these rules on an ongoing basis and "to amend them as experience warrants." [12] 62 FR 59627. (Similarly, the Commission's implementation of the 1982 pilot program to reintroduce exchange-traded commodity options included a number of rule amendments during the program and before its termination.)

Several commenters expressed concern that the Commission, in connection with its final consideration of permanent rules, is unlikely to revisit or to reconsider the fundamental policy decisions relating to its present determination of the pilot program's overall structure. They suggested that the Commission delay promulgating interim rules and repropose an entirely different set of regulatory conditions which would apply to the trading of agricultural trade options, including permitting them to be cash-settled.

The Commission disagrees with this suggested approach. The Commission views the pilot program as an experiment, has not foreclosed the reconsideration of any specific issue and, by determining that particular rules are appropriate at the initiation of the pilot program, has made no judgment regarding the permanent rules that it ultimately will promulgate. The Commission believes that proposing a new set of rules without any market-based experience would foster delay and provide little additional substantive information to inform its decision on how to proceed. For this reason, the Commission believes that the public interest will best be served by making agricultural trade options available to the market now under the regulatory structure as proposed and by consideration of possible amendment of the interim rules based upon actual market experience.

2. Physical Delivery

The overall structure of the interim rules adheres closely to the proposal. The interim rules, like the proposed rules, permit only the trading of off-exchange agricultural options that if exercised, would require physical delivery from one commercial party to another in the normal merchandising chain. In proposing this provision, the Commission reasoned that such options would explicitly include a merchandising function which exchange-traded contracts did not, that such options would be between those having pre-existing cash market relationships and that the mechanics of these options were likely to be well-understood. *See*, 63 FR at 59627.

A number of comments, including one from two United States Senators and a joint comment of seven farm and commodity representative organizations (joint comment), suggested that the Commission also include within the pilot program cash-settled options. However, not all commenters agreed with this view. For example, one state-level farm organization strongly supported the proposed provision requiring physical delivery, noting that it was:

> in complete agreement * * * that the off-exchange agricultural trade option be settled by either delivery of the physical commodity or by the writing of a forward contract which will guarantee delivery. To allow a cash-settled instrument would potentially foster cash speculation between vendors and buyers.

Many of those advocating inclusion of cash-settled options suggested that the proposed physical delivery requirement would preclude any flexibility in the type of options that could be offered, making it impossible, for example, to offer options combining production and price protection—so called "revenue" contracts. Revenue option contracts would enable producers to lock in a minimum revenue for production on their farms. An association representing grain elevators reasoned that:

> [t]he rules, as written, provide no apparent authority to write revenue contracts combining both yield and price risk management into one contract. * * * [R]evenue contracts that could utilize the yield contracts offered by the Chicago Board of Trade to shift a substantial part of this risk are, in our view, very important to the farmer. They are also important to the cash grain industry in having the opportunity to work along side the insurance industry in offering a more "complete" line of futures-based revenue contracts. We strongly urge the CFTC to include revenue contracts (and other legitimate agricultural trade option contracts where physical delivery is not possible) under the pilot program. (Emphasis omitted.)

The physical delivery requirement does not preclude development of revenue-type option contracts. Nothing in the rules requires that the trade option specify the underlying commodity by referencing an absolute number of bushels or other delivery unit. The amount of the commodity underlying the option could be expressed by referencing the yield on a designated number of acres, based either on the producer's actual yield or a reported average yield, thereby providing a minimum return to a producer per acre without running afoul of the rules' requirements. If the total price for the amount of commodity required to be delivered were above the guaranteed price, the producer would let the option expire and deliver outside of its terms. If the total price were below the option's strike price, the producer would exercise the option, delivering his or her production to the option writer.[13] The Commission anticipates that a wide variety of option structures could be designed to offer additional forms of revenue protection under the pilot program's rules and invites those interested in developing such instruments to seek its guidance if questions arise regarding their permissibility.

A number of commenters similarly objected that the proposed rule requiring that agricultural trade options be settled only by physical delivery further unduly restricted their potential flexibility and utility by forbidding their early termination through offset. This requirement was proposed as a means to ensure that agricultural trade options maintain a close relationship to the cash market activities of participants and to dissuade speculative use of the contracts. Several commenters, however, argued that a producer's ability to capture any remaining value left on the option by selling the option back to the issuer under the terms of the original contract when the optional price protection was no longer wanted was not inconsistent with these objectives.

However, permitting the offset of an option prior to its expiration would render meaningless the provision requiring physical delivery of the option, if exercised. The right to offset would eviscerate the physical delivery requirement by enabling the option

[12] The Commission noted in the notice of proposed rulemaking that "it will evaluate the efficacy of the interim final rules at the conclusion of the pilot program." 62 FR 59627, n.19. That does not suggest, however, that the Commission will not consider altering the interim rules during this period, but only that it is the Commission's intention not to make the interim rules final until a full review of the pilot program experience.

[13] It is common practice for certain commodities to provide a cash adjustment where the commodity delivered departs from quality or other contract specifications, including tolerances for the actual amount or weight delivered compared to the contract amount. Similarly, if a state-wide average yield were used as a reference and the producer's actual production fell somewhat short, the total price could be adjusted to account for the relative shortfall without abrogating its fundamental nature as a delivery contract.

holder at any time to avoid delivery, essentially cash-settling the option.[14] This would undermine the Commission's efforts to develop a pilot program to reintroduce agricultural trade options under controlled conditions.

Although the interim rules have not been modified to permit the offset of agricultural trade options, the rules as proposed permitted a degree of flexibility to capture an option's remaining value prior to its expiration. The proposed rules recognized that agricultural trade option contracts could be amended to "reflect changes * * * [in] activity or commitments in the underlying cash market or to reflect the carrying of inventory." 62 FR at 59638.[15] Such amendments could include deferral of an option contract's delivery date with alteration of the contract's price to reflect, among other adjustments, any remaining value on the original option.[16]

The proposed rules also contemplated that delivery on an option contract, if exercised, could be by the "immediate transfer of title to the commodity or by transfer of a forward contract commitment." 62 FR 59627. Proposed rule 32.13(a)(3)'s requirement that the "option can only be settled through physical delivery of the underlying commodity" should be read as permitting termination of the option contract prior to its expiration through entry into a forward contract commitment as well as permitting use of a forward contract upon exercise. Once the forward contract has been substituted for the trade option, the forward contract is a firm commitment to deliver, and the optional "walk-away" nature of the option cannot be reestablished. The substitution of a forward contract for the physical delivery option prior to the option's expiration is consistent with the overall purpose of the rule of maintaining a close relationship between the option transaction and the participant's cash market activities and of dissuading use of agricultural trade options as speculative vehicles. The Commission is modifying the interim rule to clarify that settlement of the option by physical delivery does not preclude the option contract's amendment, or its termination by entry into a forward contract, prior to expiration with an appropriate adjustment to the contract price.[17]

3. Eligible Vendors

A number of commenters also advocated expansion of those eligible to be agricultural trade option merchants to additional classes of vendors. Specifically, for example, the joint comment suggested that all "financial institutions with a direct interest in production agriculture" be permitted to become agricultural trade option vendors. Other commenters supported the Commission's proposed limitation, suggesting that trade options appropriately should be limited to "producers and buyers of the enumerated commodities."

Several commenters opposed the conditions for registration as an agricultural trade option merchant on the assumption that eligibility would be restricted to "first handlers" of the commodity. Although first handlers typically would be eligible to become agricultural trade option merchants, other categories of commercial users would also be eligible to apply for registration. For example, as one commenter noted, "[w]e assume the CFTC would also permit cash grain merchandisers, which have no facilities, but do take title to commodities, to also write options." As discussed above, the requirement that the option contracts, if exercised, be physically delivered does not require that the agricultural trade option merchant accept delivery only in an over-the-scales operation. To the contrary, delivery of the commodity can occur through any *bona fide* means of conveying legal ownership of the commodity, including the transfer of warehouse receipts. Accordingly, grain merchants, investment bankers with active commodity trading operations and various types of agricultural processors or commercial users of the commodity might be eligible to register to operate as an agricultural trade option merchant. In light of the potential diversity of eligible registrants, the Commission believes that the interim rules will not result in lack of competition among vendors.[18]

The Commission is convinced that the overall structure of the interim rules is both a necessary and appropriate means to introduce this new class of instrument. Recent experience with various types of agricultural marketing schemes and contracts indicates that a degree of caution is required. Introducing these instruments as a pilot program, limited initially to option contracts which upon exercise result in physical delivery, traded between commercials in the underlying commodity, should provide a degree of protection to the parties and a solid foundation upon which to lift the current prohibition on such instruments.

As discussed above, the proposed rules provided greater flexibility than credited by many of the commenters. Moreover, in the interim rules the Commission has modified or clarified the rules as proposed, providing further avenues for flexibility. The Commission is convinced that the interim rules will provide the market with room to innovate and to create useful risk-management tools within its overall structure.

Moreover, the interim rules have been modified from the proposed rules in a number of important respects apart from issues relating to the pilot program's overall structure. In response to specific suggestions by commenters, the interim rules clarify and streamline several specific regulatory requirements. In several instances, the interim rules significantly lessen the burden that the proposed rules would have imposed on those who register as agricultural trade option merchants and their sales forces, as well as the requirements relating to

[14] See, CFTC Interpretive Letter No. 96–41, Division of Economic Analysis Statement of Policy in Connection with the Unwinding of Certain Existing Contracts for the Delivery of Grain, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,691 (Division of Economic Analysis) for a discussion of impermissible offset provisions.

[15] Proposed rule 32.13(a)(7)(i) (paragraph of required disclosure statement entitled "Business Use of Trade Options").

[16] Accordingly, proposed rule 32.13(a)(7)(ii)(D) required disclosure of the worst possible financial outcome where "through amendments to the option contract it is possible to lose more than the amount of the initial purchase price." 62 FR 59638.

[17] A price adjustment to reflect the remaining value of the trade option contract upon substitution of a fixed-price forward contract for the option is consistent with the treatment accorded minimum price guaranteed forward contracts by Commission staff. The Division of Economic Analysis in CFTC Interpretative Letter 96–23, (Re: Sections 1a(11) and 2(a)(1) of the Commodity Exchange Act—Request for Guidance Regarding Producer Option Contract), [1994–1996 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶26,646, expressed the view that, within a forward delivery contract offering a guaranteed minimum price, the holder of the contract could elect to eliminate the upside pricing potential (the option-like pricing component) in the contract in return for establishing a fixed price forward contract, the price of which was adjusted to reflect the liquidated remaining value of the option component. The option-like pricing component could not, however, be reestablished in the contract.

[18] One comment letter questioned whether agricultural cooperatives would be able to meet the net worth requirement for registration as an agricultural trade option merchant by combining the individual net worth of each member. Generally the rules do not distinguish cooperatives from any other type of enterprise. Accordingly, the cooperative must itself have a net worth of $50,000 to meet the applicable requirement. To the extent that cooperatives act on behalf of members as a commodity merchandiser, they may purchase agricultural trade options in connection with their merchandising function. Of course, in doing so they would have to have the contractual right to deliver the commodity to settle those options which they choose to exercise.

the merchant's on-going business operations. These modifications are intended to achieve the same regulatory goals, and provide a similar degree of protection, as the rules as proposed, but in a less costly or burdensome manner. The specific changes are discussed in greater detail below.

B. Regulation of Agricultural Trade Option Merchants

1. Registration

Registration of commodity professionals is an important means by which the Commission polices the futures and option industry and is the primary mechanism for reassuring the public of the honesty and proficiency of futures professionals. As the Commission noted in its notice of proposed rulemaking, "registration * * * will be critically important in the decentralized market permitted under the pilot program." The notice further noted, however, that the need for extensive registration requirements is offset by the fact that the offer and sale of trade options would be a complement to the first-handler's existing cash market businesses. Accordingly, the Commission proposed a streamlined form of registration, consisting of a single application form covering both the agricultural trade option merchant as an entity and its authorized sales force.

The Commission also proposed to delegate administration of the registration function to the National Futures Association (NFA). Although some commenters opposed this on the grounds that it would "permit another user-fee based regulator * * * to initiate far-reaching regulatory activities among cash market businesses," the delegation to the NFA is narrow, confined to administration of the registration function,[19] and necessary to conserve Commission resources.

Based upon its administrative experience, NFA suggested a number of modifications to the proposed registration rules. In its view, a single application for registration of the agricultural trade option merchant and its sales force "rather than providing a streamlined registration process, * * * will unduly complicate and actually hinder the registration of ATMs." Because the Commission's ultimate goal is for the overall registration process to be streamlined, the Commission has incorporated the NFA's suggestions into the interim rules. Accordingly, agricultural trade option merchants and their associated persons will be required to file separate registration applications, each focussed specifically on the requirements for that category of registrant. Separate forms in support of the agricultural trade option merchant's application for registration are also required of the natural persons who are its principals. Individual application forms for each category should result in greater simplicity for each and not in an increase in the total length of the applications or in the amount of information provided.

NFA also suggested a number of rule clarifications, including the addition of definitions of the registration categories and incorporation by explicit reference of the procedures for denial, suspension and revocation of applications for registration which are applicable to all classes of registrant under the Commission's rules. The interim rules have been modified to reflect these technical changes.[20]

Many commenters offered the view that the proposed registration requirements for agricultural trade option vendors should be relaxed. This view was shared by both potential customers and vendors alike. The joint comment noted the agricultural associations' "concern () that the high level of specific regulation * * * will impose excessive costs * * * that are not reflective of, or proportionate to, the risks associated with removing the ban * * * for a narrowly defined range of products." Specifically, the joint comment suggested that the fingerprint requirement was unnecessary and that the proficiency and ethics training requirements be relaxed. A company active in the cash grain business noted that "[r]egistration for those organizations offering ATOs in the pilot program period seems reasonable, but the imposition of testing requirements, ethics training, and fingerprinting push the regulatory oversight of these products beyond a reasonable limit."

The Commission has reconsidered these proposals in light of similar comments received from a broad range of commenters. The reason that fingerprints typically are required of registrants is to perform a background check verifying the information submitted on the registration application. This requirement may be less necessary in the context of agricultural trade options where a likely characteristic of the market is a pre-existing commercial relationship between the vendor and customer. The likelihood of such a relationship is reinforced by the requirement that options, if exercised, must be physically delivered. That requirement generally will tend to keep the markets local, where there is a greater likelihood that customers will have personal knowledge of the background of the agricultural trade option merchant and its sales force.[21] Accordingly, the Commission has removed this requirement from the interim rules, and because the primary delay in processing registration applications has been associated with fingerprint checks, the Commission has also removed from the interim rules provisions relating to temporary licensing of registrants.

The interim rules modify the requirement that persons applying for registration pass a competency test and fulfill an ethics training requirement. Many commenters representing both potential customers and vendors suggested that the testing requirement would dissuade individuals from registering, particularly because this would be a sideline to their core cash-businesses. Several commenters specifically objected that the Series 3 examination, which was included in the proposed regulations as a permissible alternative to a more focussed test not yet developed, would not be relevant to these products.

As noted in the advance notice, a competency test is only one means for ensuring the market vendors have the

[19] Fees will be limited to the cost of this one function and are expected to be modest.

[20] The Commission's explicit application of various of its procedural rules to agricultural trade option merchants and their associated persons in no way limits the applicability of any other statutory or regulatory provision which is applicable to Commission registrants. In this regard, the Act and many of the Commission's rules impose requirements or prohibitions on Commission registrants using the phrase "any person or registrant who is registered under this Act" or similar words. For example, Section 14 of the Act provides aggrieved customers with the opportunity to bring before the Commission for adjudication disputes involving violations of the Act or rules by "any person registered under this Act." *See also*, 17 CFR 3.34, 3.56, 3.60. Although "agricultural trade option merchant" and "associated person of an agricultural trade option merchant" are not registration categories defined by the Act, they are nevertheless registration categories "under the Act" by virtue of the Commission's promulgation of rules creating these registration categories under section 4c(b) of the Act (its plenary authority over the regulation of options) and under section 8a(5) of the Act (its general rulemaking authority). The Commission's reparations program under section 14 of the Act will therefore be available to customers of agricultural trade option merchants and their associated persons as it is for all other categories of Commission registrant. Customers will be apprised of this right in the required summary disclosure document.

[21] The local nature of cash marketing channels is typical for many, but certainly not all, commodities. The interim rule's requirements must generally be understood within the normal cash marketing channels for each commodity. For some commodities, normal cash marketing channels include delivery obligations being undertaken as to processors or users at a considerable distance from producers.

requisite professional and market knowledge. Development of a testing program specifically focussed on this market may be premature in light of the unknown number or composition of potential vendors and the existing tests' admitted lack of direct relevance to these products. However, almost all those commenting agreed that education was needed. Many organizations representing both likely customers and potential vendors suggested that this education be voluntary and stated an intention to offer educational training opportunities to their members.

As the Commission noted in its notice of proposed rulemaking, "customers have the right to expect that such merchants and their sales forces will have successfully demonstrated mastery of the issues relevant to the offer or sale of these instruments." 62 FR 59630, n. 35. In order to provide customers with some assurance that this expectation will be met, the interim rules substitute for the proposed competency test a requirement that those seeking registration as associated persons of an agricultural trade option merchant complete six hours of instruction in the requirements of the Act and rules promulgated thereunder, the economic functioning and risks of agricultural trade options, and the registrant's responsibility to observe just and equitable principles of trade relating to such options. This course of instruction includes among others, the subjects which would have been specified by the proposed ethics training requirement. Accordingly, that proposal has been deleted. Instruction can be by videotape or electronic media and need not be through classroom attendance.

The applicant for registration as an associated person must include in the application evidence provided by an eligible instructional provider that the applicant completed this instructional requirement. This evidence of completion must include a certification that the instructor has three years of relevant experience, is not subject to a statutory or other disqualification and a disclaimer that the Commission or the NFA has not approved the course of study's content.[22] Instructors must notify the NFA of their intent and eligibility to offer such training prior to doing so, and must maintain appropriate documentation of applicants' completion of the requirement.

There is no educational requirement for customers. However, as the Commission previously stated:

> it strongly urges private sector organizations to provide a variety of means of fulfilling this need. The success of the pilot program will depend, in part, on the success of various organizations in educating potential trade option customers.

Id.

2. Financial Requirements

The Commission, in proposing various financial protection requirements, noted that agricultural trade options, like all commodity futures or option instruments, involve risk arising from the need for performance at a future date by the contract's counterparties. Off-exchange transactions such as these, however, do not have the safety of an exchange clearinghouse to reduce credit risk. Because many agricultural trade option customers will not have the resources to conduct formal credit worthiness evaluations of their counterparties, the Commission proposed that agricultural trade option merchants be required to maintain a minimum level of net worth and to segregate from their own funds premiums paid by customers at initiation of an option contract. It did not propose requiring agricultural trade option merchants to cover their market exposure. 62 FR 59628–59630.

The Commission proposed the minimum net worth requirement "to establish a base level for entry or access to a market * * * to assure that companies or entities conducting business offer some assurance of having the financial wherewithal to perform on their obligations." 62 FR 59628. Commenters on the advance notice were not unanimous in support of such a minimum financial requirement. Some were opposed in order not to exclude smaller entities, and others argued that various state financial requirements would be sufficient. Believing that a common federal minimum standard should prevail, the Commission proposed to apply to agricultural trade option merchants the $50,000 minimum net worth requirement established by the United States Department of Agriculture (USDA) (and many states) as a condition of obtaining a federal grain warehouse license.

A number of commenters took issue with the $50,000 minimum net worth requirement, suggesting that it was too low. The joint comment suggested that agricultural trade option merchants be required to "maintain a bond equal to * * * premiums of all customer options less the current cash value of the contracted commodities in addition to existing state or federal bonding requirements." One potential vendor recommended a minimum net worth of $1 million with adjustments "to require that the risk exposure of a seller of options has an appropriate relationship to the seller's net worth," reasoning that "one of the greatest risks to the development of an efficient agricultural trade option market is that undercapitalized sellers of the options will default." Other commenters supported the proposed net worth requirement as an appropriate minimum level.

The Commission agrees that the $50,000 net worth requirement will offer only limited protection from counterparty default risk. However, the price risk to the agricultural trade option merchant of an option position will be similar to that of a forward contract position. Greater financial protection would indeed be achieved, as suggested by several commenters, by requiring vendors to post bond or to maintain increasing levels of net worth as the degree of exposure rises. Nevertheless, constructing a meaningful regulatory scheme to achieve that goal, however appealing the concept, would result in rules which are far more complex than any of those proposed, including rules on uniformly valuing various risks. In this regard, the rules governing computation of regulatory capital which must be maintained by futures commission merchants are among the most complex of all of the Commission's rules. In addition, such a dynamic valuation requirement would require a degree of regulatory supervision that would be difficult if not impossible to achieve in this decentralized, over-the-counter market.[23] In these circumstances, the suggested bonding requirement might lull market participants into a false sense of security. Accordingly, the Commission is adopting the minimum net worth requirement as proposed.

The interim rules, as proposed, provide that the net worth requirement is ongoing in nature, requiring

[22] At least one commenter, a large grain merchant, commented that it provided in-house ethics and business training for its employees. In-house training by an agricultural trade option merchant for its associated persons is not precluded by these rules, nor is the use of employees as instructors. Employee-instructors meeting the requisite requirements will be qualified to certify fulfillment of the training requirement for other employees. Such employee-instructors, however, cannot be the direct supervisor of the associated person applying for registration.

[23] The regulated futures markets provide a high level of financial protection through their clearinghouses. Each exchange has a compliance and audit staff, and clearing members and futures commission merchants devote significant resources to auditing for compliance with the various financial requirements. The Commission cannot offer comparable protection for transactions outside of the regulated exchange environment. Customers must accept the fact that trading off-exchange entails greater counterparty risk.

agricultural trade option merchants to maintain the specified level of net worth in order to enter into new trade option contracts and requiring them to notify the Commission at any time if they have fallen below prescribed levels. In addition, the agricultural trade option merchant must perform a reconciliation of its financial position at least monthly to determine compliance with this requirement. It need not change accounting procedures to conform to specific Commission accounting requirements, provided it uses "fair value" accounting under Generally-Accepted Accounting Principles, the accounting method generally used by cash market businesses.[24]

However, the interim rule has been modified from the proposed rule which required agricultural trade option merchants to hold in segregation all premiums paid by customers at the initiation of the option contract. Several commenters suggested that the requirement as proposed would discourage vendors from responsibly covering the risk of the transaction and suggested that the Commission permit vendors to use customer premiums to hedge that risk. The Commission proposed the segregation requirement both as a means of discouraging a business in financial difficulty from writing options to generate immediate cash and as a means of better safeguarding customer funds. 62 FR 59629. Permitting the vendor to hedge the option's risk using the customer's funds, particularly if the covering transaction is exchange-traded, also achieves these objectives. Accordingly, although the Commission is not mandating that agricultural trade option merchants cover their risk, the interim rules permit the merchant to use up-front customer premiums to hedge those risks using exchange-traded instruments. Customer funds not used for this purpose, as proposed, must be treated as the funds of the customer and be kept in a segregated account.[25]

3. Recordkeeping and Reporting Requirements

In proposing recordkeeping requirements, the Commission reasoned that "the maintenance of full, complete, and systematic books and records by agricultural trade option merchants is crucial to the Commission's ability to respond to complaints of customer abuse arising from such transactions and is necessary to the agricultural trade option merchant's establishment of appropriate internal controls of their financial operations." 62 FR 59633. Most commenters agreed and supported the requirements as proposed. At least one commenter, however, questioned the requirement that a record of unfilled or canceled contract orders be kept. It reasoned that "[r]ecording all orders and cancellations will likely provide little insight to the CFTC when compared to the arduous task of tracking these records for those offering these products." This recordkeeping requirement, however, serves a different purpose than informational reporting to the Commission. The keeping of complete books and records is necessary to resolve particular customer disputes, if they arise, and is a sound business practice. The Commission therefore is adopting the recordkeeping rule as proposed.[26] However, the Commission has modified the interim rule by deleting the NFA's proposed authority to inspect books and records at the request of the NFA and as suggested by other commenters.

In addition to the keeping of books and records, the Commission proposed two distinct reporting requirements—routine and special call reporting. Routine reports are required for general market surveillance purposes, to permit the Commission to construct a picture of the market and to evaluate the impact of activity in the trade option market on the cash and exchange-traded markets.[27] One commenter suggested that information on the total premiums collected and the total value of all fees, commissions, or other charges during the reporting period was not necessary to this surveillance function. The Commission agrees, and the interim rules do not require the routine reporting of premiums, fees, commissions, or other charges. However, this information may be helpful to a complete understanding of the market's operation, particularly during the pilot phase of the rules. Accordingly, the Commission is retaining the authority to request such information on a special call basis.

Special calls are a reporting device used by the Commission for obtaining information only when needed. A special call may be used to elicit information from a particular trader or registrant for market or financial surveillance purposes or to gather data for market-wide studies. As the Commission explained in the notice of proposed rulemaking, it anticipates the need to issue special calls for information during the pilot program to gather data with which to assess its success. 62 FR 59633. At least one commenter suggested that the proposed rule be clarified that the agricultural trade option merchant "be required to report * * * only the 'options' portion of the * * * position." As proposed, rule 32.13(e) in the introductory paragraph stated that special calls were for "information relating to agricultural trade options." However, to clarify further the provision, the Commission is modifying the rule as adopted to provide that the information which can be requested by special call concerning futures or cash transactions must be related to the agricultural trade option position. In this regard, potential agricultural trade option merchants should be assured that the Commission exercises its existing special call authority in other markets with restraint and with an understanding of the costs involved in any such request. As noted in the notice of proposed rulemaking, the Commission encourages agricultural trade option merchants to maintain a current listing of customers names and other identifying information for ease of compliance.[28]

[24] The Commission believes that the guidance provided in the American Institute of Certified Public Accountant's Audit and Accounting Guide entitled "Brokers and Dealers in Securities" provides the relevant guidance which should be followed in connection with assigning a fair value to agricultural trade options. It states, "Under generally accepted accounting principles, fair value is measured in a variety of ways depending on the nature of the instrument and the manner in which it is traded. Many financial instruments are publicly traded, and end-of-day market quotations are readily available. Quoted market prices, if available, are the best evidence of the fair value of a financial instrument. If quoted market prices are not available, management's best estimate of fair value should be based on the consistent application of a variety of factors available to management." A complete discussion of the factors is provided in the audit guide.

[25] An agribusiness company commented that the rules "should indicate (like § 1.25) that the seller of the options can invest funds in government obligations to earn interest." The proposed (and interim) rules so provide. *See*, paragraph (e) of § 32.6, incorporated by reference in proposed rule 32.13(a)(4).

[26] As proposed, the final rules require that records relating to agricultural trade options including covering transactions must be kept and maintained for a period of five years and must be readily accessible during the first two years of that five-year period. *See*, 17 CFR 1.31.

[27] Initially, the Commission anticipates that such reports will be filed manually, including by facsimile. However, it also anticipates that as the pilot program proceeds, reports will be filed electronically, by dial-up transmission or via the Internet. The NFA, which has been delegated authority to collect these reports, is encouraged to work cooperatively with the industry in advancing appropriate procedures, conventions and standards for electronic transmission.

[28] Generally, a special call for study purposes requests specified information on all positions open on the call date. The Commission expects that any special calls would request information related to a customer's positions in agricultural trade options

Continued

C. Customer Protections—Risk Disclosure, Required Contract Terms and Required Account Information

1. Risk Disclosure Statement

Almost all commenters agreed that required risk disclosure was a valuable and necessary means of protecting customers. In promulgating the interim rule, the Commission has clarified the requirement that both an initial summary risk disclosure statement and transaction-specific disclosure statements be provided.

Many of the commenters opined that the proposed summary risk disclosure was too lengthy and feared that many customers would forego reading it. The Commission after reviewing the proposed summary disclosure statement has shortened it by deleting some redundant information, by further summarizing other information and by simplifying its language.[29]

Some customers opposed the transaction-specific disclosure, objecting that this requirement would prove to be burdensome for the limited sales forces many agricultural trade option merchants may employ. Other commenters strongly supported it, noting that the transaction-specific disclosures are necessary to a customer's understanding of the nature of the option transaction being entered. The Commission concurs. The transaction specific disclosures need not be voluminous, are not required to be in a separate document and can be included as an addendum to the contract form itself. Although some commenters objected to the requirement that the worst possible financial outcome be disclosed, that requirement is only triggered when the option premium is not collected up front or when the contract is amended. The worst possible outcome need not take into account lost opportunity cost—therefore, it often will only be the potential loss of the premium and other related charges. Where a contract is being amended, such as by rolling the delivery date, the worst possible outcome will include the cost of the additional premium, fees and adjustment to the price resulting from any gain or loss on the contract at the time of the amendment or contract roll. In light of the imperfect understanding many hedge-to-arrive customers had of the effect of rolling on their final contract price, such a disclosure is plainly needed. Accordingly, the Commission is adopting this rule as proposed.

As the Commission explained in the notice of proposed rulemaking, "the provision of the mandatory risk disclosure statement will not relieve the agricultural trade option merchant of the responsibility to avoid material misstatements or omissions or any other form of fraudulent misconduct." 62 FR 59632. Thus, providing a mandatory risk disclosure statement will not necessarily cure what is otherwise fraud. *See, e.g., Clayton Brokerage Co.* v. *Commodity Futures Trading Commission*, 794 F.2d 573, 580–581 (11th cir. 1986). Accordingly, agricultural trade option merchants may need to make such additional disclosures as necessary in light of all the particular circumstances, including the nature of the instrument and the customer.[30]

2. Written Contract Terms

Generally, commenters supported the proposed rules requiring that specific contract terms be in writing. However, several commenters objected to the proposed requirement that the written contract terms include the quality or grade of commodity to be delivered if the contract is exercised and any adjustment or price for deviation from stated quality or grade. One commenter, a cash grain merchant, stated that the proposed requirement was not consistent with cash market practice. That commenter stated that:

> transactions are established in most instances, for a specific quality of grain. * * * To the degree that the actual grain delivered under these agreements fails to meet the standard grade specified in the contract, the buyer and seller must determine the impact on the value of the commodity delivered, and negotiate discounts/premiums accordingly.

Others active in the cash markets agreed, nothing that common cash market practice is for a forward contract to specify price for a standard commodity grade and for adjustments to be made for variance from this specification by reference to posted schedules of discounts or premiums. Reportedly, these schedules vary frequently, often daily. In light of these comments, the Commission is modifying the interim rule to make clear that an exact schedule of discounts/premiums need not be specified and that such adjustments can be stated as a range and method for determining adjustments, such as "posted market scale of discounts at delivery."

3. Customer Account Information

Many commenters supported the proposed requirement that agricultural trade option merchants provide customers with information regarding their positions and accounts. However, several noted that the monthly account statement would impose a costly informational burden for a questionable benefit. They explained that few entities likely to become agricultural trade option merchants have available the information infrastructure to produce monthly account statements valuing the transactions and that such information would be of only marginal utility to customers in light of the requirement that option contracts must be settled by delivery. The Commission finds this persuasive and is modifying the monthly account statement requirement to provide that the agricultural trade option merchant notify customers of the expiration date of each option which will expire within the next month. This should greatly reduce the informational burden on agricultural trade option merchants but nevertheless provide customers with notice sufficient to reduce the occasions on which customers permit in-the-money options to expire due to inattention.[31]

In addition to the monthly account statements, the Commission proposed that agricultural trade option merchants provide customers in writing, within twenty-four hours of a request, current commodity price quotes or other information relevant to the customer's position and account. A number of

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along with the customer's name and other identifying information. In the past, some firms have maintained some, but not all identifying information at a central location, and branch locations have kept the remaining information in differing formats, creating difficulty in providing the information requested. Accordingly, in setting up their information systems, firms should keep in mind the likelihood of a request for this information during the pilot program.

[29] One commenter opined that the reparations language of the summary disclosure document was unclear as to its impact on the availability of other venues for dispute resolution, such as arbitration offered under the auspices of a trade association. The language of the summary disclosure document has been modified to make clear that all customers have the right to use the Commission's reparations program to resolve disputes. Thus, the customer may not be compelled to waive this right by any other provision in the customer agreement or elsewhere. Customers may, however, voluntarily agree to an alternative method of dispute resolution specified in the customer agreement, the contract or elsewhere. *Compare*, Commission Regulation 180.3(b)(3).

[30] One commenter suggested that the Commission clarify that the disclosure statement could be electronic. The Commission agrees and has clarified that electronic disclosure is permitted.

[31] At least one commenter representing producers suggested that, although the monthly account statement requirement might be unduly burdensome, agricultural trade option merchants as a matter of best practices should periodically update their customers on market conditions, particularly during times of high volatility. The Commission agrees that this is desirable and will consider further the issue of periodic customer statements based on experience under the pilot rules.

commenters supported this requirement, but others suggested that it could prove to be an undue burden, particularly because it required a written response within so short a time. In light of the modification of the monthly account statement requirement discussed above, the requirement to provide customers with account-related information upon request is of even greater importance. However, the Commission is modifying the interim rule to lessen the burden which it imposes by requiring that all responses be in writing. This may be particularly useful where the requested information relates mainly to market conditions or quotes and the agricultural trade option merchant provides an immediate response by telephone. The customer may ask, however, that the information be supplied in writing, and under the rule as modified the agricultural trade option merchant must do so within 48 hours of the request. These modifications should strike the appropriate balance between providing customers with timely account-related information and the burden on the agricultural trade option merchant of doing so.

D. Exemption for Sophisticated Entities

The Commission proposed to exempt individuals or entities who are commercials and have a net worth of at least $10 million from compliance with the conditions for trading agricultural trade options. Several commenters suggested that the Commission clarify whether a high net worth entity acting as a vendor would be exempt from the rules' requirements. The exemption applies only to high net worth entities trading among themselves. If an option customer does not meet the net worth requirement, the agricultural trade option merchant must comply with all of the rules applicable to such option transactions.

In addition, a number of commenters suggested that the Commission clarify that the exemption also applies to the associated registration requirement and to the trade option prohibition itself. The Commission has done so. However, it should be equally clear that the exemption from the conditions under which the prohibition is being lifted is not independent of the pilot program, but rather part of it. Thus, the exemption for high net worth individuals and entities will be the subject of Commission oversight and may be reconsidered, as with any other of the interim rules, based upon market experience during the pilot period.

Several commenters questioned the reason for, and the effect of, the higher dollar level for this exemption than the exemptions applicable to high net worth persons under parts 35 and part 36 of the Commission's rules.[32] The Commission remains convinced that the dollar level of this exemption is appropriate and is adopting it as proposed. The exemptions under parts 35 and 36 were promulgated a number of years ago, and the Commission has announced that it will publish a concept release seeking comment on them. Issues relating to the dollar level of those exemptions are more appropriately considered in that context.

One commenter representing swaps dealers requested that the Commission clarify that the part 35 exemption applies to off-exchange agricultural options rather than this exemption. The Commission disagrees. Any off-exchange option on an enumerated agricultural commodity must comply with Commission rule 32.13(g) for exemption from the Act and Commission rules, and no other exemptive provision is available.[33]

Another commenter suggested that the Commission modify the proposed rule to exempt transactions "between parties whose obligations under the option contract are guaranteed by a high net worth affiliate." The Commission recognizes that certain sophisticated, high net worth entities may choose to conduct business through less well capitalized affiliates or subsidiaries for a variety of reasons. Accordingly, it is modifying the interim rule to permit a party to qualify for the exemption on the strength of a guarantee by its affiliate which does meet the net-worth requirement.

E. Relief for Exchange-Traded Instruments

Representatives of several futures and option exchanges expressed the concern that lifting the ban on agricultural trade options would put the exchanges at a competitive disadvantage. In commenting on the advance notice, an exchange official noted that futures exchanges currently are prohibited from offering options on physicals for these same commodities,[34] thereby restricting their ability to offer certain flexible exchange-traded instruments and to compete with agricultural trade options.[35]

The Commission agreed with the exchange commenter and proposed to remove the restriction on exchange trading of options on physicals on these commodities. A different exchange responded to this proposal, labeling it a "remarkably empty gesture."[36] Whether or not the exchanges choose to compete with physically-settled trade options by offering flexible physically-settled option contracts, the Commission believes that there is no longer a reason to preclude them from doing so by regulation. Accordingly, it is removing the restriction for exchange-traded

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[32] The Commission explained in the notice of proposed rulemaking that, "[u]nder parts 35 and 36, corporations or partnerships having total assets exceeding $10 million or net worth of $1 million in cases where the transaction was entered into in connection with the conduct of its business or to manage the risk of an asset or liability, are considered eligible for the exemption. Some have observed, however, that these qualifying amounts when applied to entities in agriculture are too low given the relatively large investment in land and equipment needed to operate a farm. The concern is that a relatively large number of individuals engaged in agriculture might meet these financial criteria based not so much on their investment sophistication and ability to gather and manage a sizable asset portfolio, but rather simply reflecting the need to acquire a threshold level of land and machinery to operate successfully a farm or agricultural enterprise. Accordingly, the Commission is proposing that, to qualify for this exemption, individuals or entities should have a net worth of at least $10 million." 62 FR 59634.

[33] In supporting its view, the commenter suggested that the Commission "clarify that the restrictions on the use of agricultural trade options do not limit the scope of the Swap Exemption," citing the study of the Commission's Division of Economic Analysis. The commenter further stated that in that way, "the CFTC will eliminate uncertainty." Promulgation of this exemption which explicitly is applicable to options on agricultural commodities eliminates any such uncertainty.

[34] Commission rule 33.4 provides in part that "[t]he Commission may designate any board of trade located in the United States as a contract market for the trading of * * * options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 1a(3) of the Act * * *"

[35] Flex options on futures on the enumerated agriculture commodities have recently been proposed by exchanges and approved by the Commission under current rules. These options are flexible in terms of strike prices, last trading days, the underlying futures months, and the style of exercise—American or European. Additional types of flexible terms involving physical delivery would be permitted if the Commission's rule is amended.

[36] The exchange further complained that it "is uncertain if there is sufficient demand for exchange-trade[d] options on physicals. In contrast, the present demand for our futures options contracts is measurable, and the [exchange] is justifiably fearful that the Commission's proposed pilot-program will adversely affect such demand." Finally, the exchange notes that the Commission unfairly holds the exchanges to higher regulatory standards than proposed here and failed to include agricultural options within the Part 36 pilot program.

Part 36 was promulgated by the Commission to initiate a pilot program for less regulated exchange markets for professionals. No futures exchange has listed a contract to trade pursuant to those rules. Although the Commission did not include the agricultural commodities in the pilot program initially, had the Part 36 pilot program been successful, the Commission might have reconsidered its scope as it did with the initial 1982 pilot program to introduce exchange-traded options.

physically-settled agricultural contracts, as proposed.

IV. Other Matters

A. Paperwork Reduction Act (PRA)

When publishing final rules, the PRA of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act, these interim final rules inform the public of:

(1) the reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

The Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget (OMB). OMB approved the collection of information associated with these rules on January 15, 1998 and assigned OMB control number 3038–0048 to these rules. The burden associated with this entire collection is as follows:

Average burden hours per response: 74.35.

Number of respondents: 3610.

Frequency of response: Daily.

Persons wishing to comment on the information required by these interim final rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small businesses. The Commission has not previously determined whether all or some agricultural trade option merchants should be considered "small entities" for purposes of the RFA and, if so, the economic impact on such entities. However, the Commission is requiring as one of the conditions for registration as an agricultural trade option merchant that the entity maintain a minimum net worth of $50,000. The Commission previously found that other entities which were required to maintain minimum levels of net capital were not small entities for purposes of the RFA. *See,* 47 FR 18618, 18619 (April 30, 1982). The Commission has also found, however, that one category of Commission registrant required to maintain a minimum level of net capital—introducing brokers (IBs)—may include small entities for purposes of the RFA.[37] In addition to the $50,000 minimum net worth required for registration as an agricultural trade option merchant, such registrants must be in business in the underlying cash commodity so that they are able to take physical delivery on those option contracts. This will require that they have additional resources in order to qualify as an agricultural trade option merchant, in contrast to an IB whose additional investment beyond the minimum net capital may be relatively small. For this reason, the Commission believes that agricultural trade option merchants are more appropriately treated as not small entities under the RFA. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the interim final rules will remove a complete ban on the offer or sale of trade options on the agricultural commodities enumerated under the Act. The interim final rules permitting such transactions subject to the specified conditions, therefore, remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures.

17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, and Trade options.

[37] An IB is required to maintain adjusted net capital in the amount of $30,000, unless it enters into a guarantee agreement with an FCM. Most IBs operate pursuant to such an agreement. *See,* 61 FR 19177 (May 1, 1996).

17 CFR Part 33

Commodity futures, Consumer protection, Fraud.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c, and 8a, 7 U.S.C. 2, 6c, and 12a, as amended, the Commission hereby amends parts 3, 32, and 33 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

2. Part 3 is amended by adding new §§ 3.13 and 3.14 to read as follows:

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions.* (1) *Agricultural trade option merchant.* "Agricultural trade option merchant" means any person that is in the business of soliciting, offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. *Provided, however,* that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) *Associated person of an agricultural trade option merchant.* "Associated person of an agricultural trade option merchant" means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that:

(i) Solicits or accepts customers' orders (other than in a clerical capacity) or

(ii) Supervises any person or persons so engaged.

(b) *Registration required.* It shall be unlawful for any person in the business of soliciting, offering or selling the instruments listed in § 32.2 of this chapter to solicit, to offer to enter into, or to enter into, to confirm the execution of, or to maintain transactions in such instruments or to supervise persons so engaged except if registered as an agricultural trade option merchant or as an associated person of such a registered agricultural trade option merchant under this section.

(c) *Duration of registration.* (1) A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(2) Agricultural trade option merchants must notify the National Futures Association within twenty days when an associated person has ceased to be so associated.

(3) An associated person who ceases to be associated with a registered agricultural trade option merchant is prohibited from engaging in activities requiring registration under § 32.13 of this chapter or representing himself or herself to be a registrant until:

(i) A registered agricultural trade option merchant notifies the National Futures Association of the person's association; and

(ii) The associated person certifies to the National Futures Association that he or she is not disqualified from registration for the reasons listed in section 8a(2) and (3) of the Act; *Provided however,* no such certification is required when the associated person becomes associated with the new agricultural trade option merchant within ninety days from when the associated person ceased the previous association.

(d) *Conditions for registration.* (1) Applicants for registration as an agricultural trade option merchant must meet the following conditions:

(i) The agricultural trade option merchant must have and maintain at all times net worth of at least $50,000 computed in accordance with generally accepted accounting principles;

(ii) The agricultural trade option merchant must identify each of the natural persons who are the agricultural trade option merchant's principals, as defined in § 3.1(a), and for any principal which is a non-natural person, each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is principal;

(iii) Each of the natural persons identified in paragraph (d)(1) of this section must certify that he or she is not disqualified from registration for the reasons listed in section 8a(2) and (3) of the Act;

(iv) The agricultural trade option merchant must certify that to the best of its knowledge, information and belief each of its associated persons or persons it intends to employ as an associated person within thirty days of that person's registration meets the requirements for registration as such; and

(v) The agricultural trade option merchant must provide access to any representative of the Commission or the U.S. Department of Justice for the purpose of inspecting books and records.

(2) Applicants for registration as an associated person of an agricultural trade option merchant must meet the following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration;

(ii) Certify that he or she is not disqualified from registration for the reasons listed in section 8a(2) and (3) of the Act; and

(iii) Complete six hours of instruction in the requirements of the Act and rules promulgated thereunder, the economic functioning and risks of the transactions permitted in § 32.13 of this chapter, and the registrant's responsibility to observe just and equitable principles of trade relating to such transactions. Such instruction can be by classroom, videotape or electronic presentation.

(e) *Applications for registration.* (1) The agricultural trade option merchant including its principals and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate certifications from each natural person that he or she is not disqualified for any of the reasons listed in section 8a(2) and (3) of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) An associated person's application must also include written evidence from the person providing the instruction that the applicant completed the six hours of instruction required by paragraph (d)(2)(iii) of this section.

(4) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless otherwise notified by the National Futures Association or by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provisions of § 3.12(f).

§ 3.14 Requirements for trainers of associated persons of agricultural trade option merchants.

(a) A person offering instruction or preparing an instructional videotape or electronic presentation under this section must meet the following conditions:

(1) Has a minimum of three years of relevant experience; and

(2) Is not subject to:

(i) Statutory disqualification from registration under section 8a(2) and (3) of the Act;

(ii) A bar from service on self-regulatory organization governing boards or committees based on disciplinary history pursuant to § 1.63

of this chapter or any self-regulatory organization rule adopted thereunder; or

(iii) A pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d or 9 of the Act or similar proceeding under section 8a of the Act or §§ 3.55, 3.56 or 3.60.

(b) Persons offering instruction or preparing an instructional videotape or electronic presentation under this section must provide written evidence of completion of the six hours of instruction required under § 3.13 to those completing this instruction. The written evidence of completion must include:

(1) A certification that the person offering the instruction meets the conditions of paragraph (a) of this section; and

(2) A disclaimer which reads: "The content, quality or accuracy of this training program has not been passed upon or endorsed by the Commodity Futures Trading Commission or the National Futures Association."

(c) Before offering such training, a person must notify the National Futures Association of the intention to do so, provide a certification to the National Futures Association that the person offering such training meets the requirements of each condition of paragraph (a) of this section, and notify the National Futures Association of any subsequent changes in circumstances which would make the certification inaccurate.

(d) Persons offering instruction or preparing an instructional videotape or electronic presentation under this section must maintain in accordance with § 1.31 of this chapter documentation reasonably designed to verify the completion of this training by persons taking instruction.

(e) Persons offering instruction or preparing an instructional videotape or electronic presentation under this section may not represent or imply in any manner whatsoever that the person has been sponsored, recommended or approved, or that such person's abilities or qualification, or the content, quality or accuracy of the person's instructional program have in any respect been passed upon or endorsed, by the Commission or the National Futures Association.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS.

3. The authority citation for part 32 continues to read as follows:

Authority: 7 U.S.C. 2, 6c and 12a.

4. Section 32.2 is revised to read as follows:

§ 32.2 Prohibited transactions.

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," except as provided under § 32.13 of this part.

5. New § 32.13 is added to part 32 to read as follows:

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) The option cannot be off-set and, if exercised, must result in physical delivery of the underlying commodity; *Provided, however,* that nothing in this paragraph precludes amendment of the option contract's delivery date or the substitution of a forward contract agreement for the option contract prior to the option's expiration or exercise.

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used, shall be treated as belonging to the customer until option expiration or exercise as provided under § 32.6, *provided, however,* that notwithstanding the last proviso of § 32.6(a), the full amount of such payment shall be treated as belonging to the option customer.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. *Provided, however,* that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, an executed copy of which shall be provided to the customer, and shall contain terms relating to the following:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) The strike price(s) of the option contract;

(iii) The total quantity of commodity underlying the option contract;

(iv) The quality or grade of commodity to be delivered if the contract is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating, such adjustments;

(v) The delivery location if the contract is exercised;

(vi) The separate elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and

(vii) The additional costs, if any, in addition to the purchase price which

may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in boldface type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in commodity trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

Appropriateness of Option Contracts

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under all market conditions. You should also be aware that you may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

Costs and Fees Associated With an Option Contract

Before entering into an option contract, you should understand all of the costs and obligations associated with your option contract. These include the option premium, commissions, fees, costs associated with delivery if the option is exercised and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract and must be explained in the transaction disclosure statement.

Business Use of Trade Options

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. If a trade option is exercised, delivery of the commodity must occur. Any amendments allowed to the option contract must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Produces are not permitted to enter into short call options unless the producer is also entering into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5250.

Acknowledgement of Receipt

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

Date

Signature of Customer

(8) Prior to entry by a customer into each option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a transaction disclosure statement to the option customer. The transaction disclosure statement shall include the following information:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) A description of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, and the services to be provided for the separate elements comprising the purchase price;

(iii) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred;

(iv) Where the full option premium or purchase price of the option is not collected up front or where through amendments to the option contract it is possible to lose more than the amount of the initial purchase price of the option, a description of the worst possible financial outcome on the contract that could be suffered by the customer; and

(v) The following acknowledgment section:

I hereby acknowledge that I have received and understood this transaction risk disclosure statement.

Date

Signature of Customer

(b) *Report of account information.* Registered agricultural trade option merchants must provide customers with open positions the following information:

(1) Within 24 hours of execution of an agricultural trade option, written confirmation of the transaction, including an executed copy of the written contract and all information required in paragraph (a)(6) of this section;

(2) Within 24 hours of a request by the customer, or 48 hours of a request for a response in writing, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer;

(3) Written notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitations and covering transactions, maintain such books and records as specified in § 1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Registered agricultural trade option merchants must file reports quarterly with the National Futures Association, in the form and manner

specified by the National Futures Association and approved by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the exercise of options during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in § 3.13(d)(i) of this chapter and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements to the Commission and National Futures Association by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than $10 million or the party's obligations on the option are guaranteed by a person which has a net worth of $10 million and has a majority ownership interest in, is owned by, or under common ownership with, the party to the option.

(2) *Provided, however,* that § 32.9 continues to apply to such option transactions.

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

6. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a–1, 13b, 19, and 21.

7. The first sentence of the introductory text of § 33.4 is revised to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or for options on physicals in any commodity regulated under the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), the regulations in this part, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

* * * * *

Issued this 8th day of April, 1998, in Washington, D.C., by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

Concurring Remarks of Commissioner David D. Spears on Trade Options on the Enumerated Agricultural Commodities

I respectfully concur with my colleagues on the promulgation of interim final rules that permit the offer and sale of agricultural trade options off-exchange between commercial users, subject to certain regulatory conditions. I am pleased to say that the interim rules reflect a significant improvement from the proposed rules of November 4, 1997. I think that the industry will agree that the rules are more streamlined and impose less regulatory conditions than the rules as proposed in November.

Nevertheless, in seeking to strike the balance between reasonable regulation and undue regulatory burdens, I am of the view that the interim rules remain somewhat restrictive in certain respects. Therefore, I would encourage the Commission to review, at least on an annual basis, the progress of the agricultural trade option pilot program and to pay careful attention to the program's regulatory provisions to assess their usefulness and necessity.

In making its reviews of the pilot program, the Commission should focus specific attention on the restrictions imposed on option contract design and strategies. The success of risk management tools is partly dependent upon the ability of users to tailor contracts to meet specific business concerns. The Commission has made some changes from its proposed rules to provide additional flexibility in contract design. However, the pilot program should afford participants even greater flexibility to negotiate specific contract terms and strategies, subject only to general guidelines.

In addition, the $10 million net worth requirement necessary to trigger an exemption from the regulations should be scrutinized more closely. My view is that there may be a more appropriate net worth level at which to set exemption eligibility. I therefore would recommend a reconsideration of the net worth amount within one year following the effective date of the interim rules, if not sooner.

Finally, I believe we have made significant progress towards transforming the November proposal into a less complex, shorter and more workable program. The fact that the program is, by its terms, a pilot program, provides the Commission and the industry with an opportunity to address individual situations that arise in the marketplace. To this end, I am hopeful that the agricultural community, the futures exchanges and others involved in the futures industry will remain in close contact with the Commission during the interim period. It is important that we maintain open lines of communication and that the Commission is apprised of the needs of the private sector. In this manner, adjustments to the pilot program may be made, as appropriate.

Dated: April 7, 1998.

David D. Spears.

Commissioner.

Concurring Remarks of Commissioner Barbara Pedersen Holum, Interim Final Rules, Trade Options on the Enumerated Agricultural Commodities

I agree with and join in the action the Commission is taking to permit exchange trading of options on physicals on the enumerated agricultural commodities. In particular, I believe this important initiative recognizes the potential of exchanges in offering more flexible option contracts. Exchanges in the past have demonstrated an exceptional ability to meet the demands of the market. I am therefore confident, now that the prohibition is to be lifted, the exchanges will work with the end-users to develop option contracts with the necessary flexibility to meet their individualized needs.

While I also join in the Commission's lifting of the prohibition on the offer and sale of off-exchange trade options on the enumerated agricultural commodities, I have serious concerns about the extensive regulatory provisions included in the interim rules. Specifically, these interim rules create a regulatory infrastructure essentially duplicating that which already exists on the exchanges. While the Commission has acted to exempt other off-exchange transactions from much of the centralized regulatory structure, these interim rules impose new, extensive, and costly regulatory mandates. In my opinion, the imposition of this far-reaching regulatory structure, and its additional costs, will limit participation and deny producers and processors the very risk management tools that lifting the ban envisions.

Dated: April 8, 1998.

Barbara Pedersen Holum,

Commissioner.

[FR Doc. 98–9879 Filed 4–15–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst Roussel Vet. The supplement provides for using bambermycins Type A medicated articles to make a bambermycins free-choice Type C medicated feed for pasture cattle (slaughter, stocker, and feeder) for increased rate of weight gain.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed supplemental NADA 141–034 which provides for using 10-grams per pound Flavomycin® (bambermycins) Type A medicated articles to make free-choice Type C medicated feeds for pasture cattle (slaughter, stocker, and feeder). The Type C medicated feeds are fed to provide 10 to 20 milligrams bambermycins per head per day for increased rate of weight gain. The supplement is approved as of March 10, 1998, and the regulations are amended by adding 21 CFR 558.95(d)(4)(iv) to reflect the approval.

As required by 21 CFR 510.455, each use of a Type A medicated article to make a free-choice medicated Type C feed requires an approved NADA or supplemental NADA. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), free-choice medicated Type C feeds must be manufactured in a licensed feed mill.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the act, this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning March 10, 1998, because the supplement contains substantial evidence of the effectiveness of the drug involved, studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the use of bambermycins with the proprietary free-choice Type C feeds as approved in this supplemental NADA.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.95 is amended by adding paragraph (d)(4)(iv) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(4) * * *

(iv) Use free-choice Type C medicated feeds for pasture cattle (slaughter, stocker, and feeder) as follows:

(*a*) *Amount.* Feed continuously to provide 10 to 20 milligrams of bambermycins per head per day.

(*b*) *Indications for use.* For increased rate of weight gain.

(*c*) *Limitations.* Not for use in animals intended for breeding. Each use in a free-choice Type C medicated feed must be the subject of an approved new animal drug application (NADA) or supplemental NADA as required by 21 CFR 510.455.

* * * * *

Dated: March 31, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–10033 Filed 4–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. 91N–0396]

Medical Devices; Reports of Corrections and Removals; Lift of Stay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; lift of stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is lifting a stay of the effective date of certain provisions in a final rule on establishing procedures for submission of reports of corrections and removals of medical devices. The Office of Management and Budget (OMB) has approved the collection of information requirements contained in the final rule.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2970.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 1997 (62 FR 27183), FDA published a final rule to establish procedures for implementing the reports of corrections and removals for medical devices by requiring that manufacturers, importers, and distributors report promptly to FDA any corrections or removals of a device undertaken to reduce a risk to health posed by the device or to remedy a violation of the Federal Food, Drug, and Cosmetic Act caused by the device which may present a risk to health. In the final rule, FDA requested comments by July 18, 1997 (62 FR 27183 at 27190), on the collection of information requirements contained in the final rule. FDA reviewed and responded to four comments received in response to this request. In the **Federal Register** of November 26, 1997 (62 FR 63182), FDA announced that the information collection requirements contained in the final rule had been submitted to OMB for approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). In a separate document published on December 24, 1997 (62 FR 67274), FDA announced that it was staying the effective date of the information collection requirements pending OMB clearance for §§ 806.10 and 806.20 (21 CFR 806.10 and 806.20).

On January 30, 1998, OMB sent FDA a notice stating that the collection of information requirements are approved for use through January 31, 2001, under OMB control number 0910–0359. FDA announced OMB approval of the collection of information provisions in the **Federal Register** of February 17, 1998 (63 FR 7811).

Therefore, under sections 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393) and under authority delegated to the Commissioner of Food and Drugs, the stay for §§ 806.10 and 806.20 that was published at 62 FR 67274, December 24, 1997, is lifted and these provisions will become effective May 18, 1998.

Dated: April 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10034 Filed 4–15–98; 8:45 am]

BILLING CODE 4160–01–F

PANAMA CANAL COMMISSION

35 CFR Parts 113 and 115

RIN 3207–AA26

Vessels Carrying Dangerous Packaged Goods Board of Local Inspectors; Composition and Functions

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is amending its rules in part 113 to prohibit the loading or off-loading of explosive cargo not destined for U.S. Government use at Commission facilities. The changes to 35 CFR part 113 are required by recent changes to commercial ports in the Republic of Panama which now provide a sufficiency of safe anchorages and facilities for the loading and unloading of explosive cargo for cargo not consigned to the Commission. As a result of these changes, the Commission is required to cease offering such services under the Panama Canal Treaty of 1977.

The Commission is also changing, in part 115, the requirement that the Administrator or his designee perform certain appointment functions and transferring those functions to the Marine Operations Director. This change makes this section consistent with the nomenclature changes called for by an internal reorganization at the Commission and the changes to 35 CFR part 115, published January 14, 1998.

DATES: Effective April 16, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402; Telephone: (202) 634–6441; Facsimile: (202) 634–6439; or John L. Haines, Jr., General Counsel, Panama Canal Commission, Facsimile: 011–507–272–3748.

SUPPLEMENTARY INFORMATION: The change to 35 CFR part 115 is a result of an internal reorganization of the Panama Canal Commission. The Board of Local Inspectors (BLI) has existed at the Panama Canal pursuant to statute or executive order since 1912, two years before the waterway opened its doors to world shipping. One of the BLI's primary functions is the investigation of marine accidents. Since 1966, the agency's Marine Director has served, ex officio, as Supervising Inspector and, in that latter capacity, has overseen the operations of the BLI.

As a result of this internal reorganization, the Marine Director (previously an active-duty or retired U.S. Naval officer) is to be known as the Maritime Operations Director. Duties previously carried out by the Supervising Inspector had been assumed by the Administrator or his designee. This change removes the Administrator from the system of appointments for a BLI chairman when the designated Chairman is absent or circumstances require the appointment of a specially qualified individual to serve on the BLI.

Because these changes are technical or internal in nature and do not place a burden on Canal users, the Commission has determined to promulgate a final rule without opportunity for comment.

The Commission is exempt from Executive Order 12866 and its provisions do not apply to this rule. Even if the Order were applicable, the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Secretary of the Panama Canal Commission certifies these changes meet the applicable standards set out in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

35 CFR Part 113

Cargo vessels, Hazardous materials transportation, Reporting and recordkeeping requirements.

35 CFR Part 115

Organization and functions (Government agencies), Panama Canal.

For the reasons stated in the Preamble, the Panama Canal Commission amends 35 CFR Parts 113 and 115 as follows:

PART 113—DANGEROUS CARGOES

1. The authority citation for part 113 is revised to read as follows:

Authority: 22 U.S.C. 3811; EO 12215, 45 FR 36043, 3 CFR 1980 Comp., p. 257.

2. Revise § 113.49(b) to read as follows:

§ 113.49 Class 1, Explosives.

* * * * *

(b) Explosive cargo to be used for other than official U.S. Government purposes may not be loaded or off-loaded at facilities of the Panama Canal Commission. Explosive anchorages prescribed in §§ 101.8(a)(2) and (3) and 101.8(c)(2) of this chapter may be used upon approval of the Marine Safety Advisor, or his designee, and with the concurrence of the Canal Operations Captain.

* * * * *

PART 115—BOARD OF LOCAL INSPECTORS; COMPOSITION AND FUNCTIONS

1. The authority citation for part 115 continues to read as follows:

Authority: 22 U.S.C. 3778; E.O. 12215, 45 FR 36043, 3 CFR 1980 Comp., p. 257.

§ 115.2 [Amended]

2. Amend § 115.2 as follows:

In paragraph (b) remove the word "Administrator" and add, in its place, the words "Marine Operations Director".

Dated: April 10, 1998.

John A. Mills,

Secretary.

[FR Doc. 98–9965 Filed 4–15–98; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AB39

Smith River National Recreation Area; Correction

AGENCY: Forest Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of March 27, 1998, the Department published a final rule implementing Section 8(d) of the Smith River National Recreation Area Act of 1990. The final rule contained incorrect amendatory language. This document corrects that document.

EFFECTIVE DATE: This correction is effective on April 27, 1998. As noted in the final rule published March 27, 1998, the final rule is effective on April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Betty Anderson, Directives and Regulations Branch, Information Resources Management Staff, Forest Service, (703) 235–2994.

SUPPLEMENTARY INFORMATION: In the March 27, 1998, final rule for the Smith River National Recreation Area, the amendatory language incorrectly stated that a new subpart G was being added to part 292. This document corrects the amendatory language in rule FR Doc. 98–7924 (63 FR 15042, Part III) as follows:

On page 15059, in the second column, in paragraph 5, on line 4, in the amendatory language "amended by adding a new subpart G" is corrected to read "amended by revising subpart G."

Dated: April 10, 1998.

Sandra Key,

Acting Associate Chief.

[FR Doc. 98–10050 Filed 4–15–98; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 74

[FRL–5996–6]

RIN 2060–AH36

Acid Rain Program: Revisions to Sulfur Dioxide Opt-ins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, ("Act") authorizes the Environmental Protection Agency ("EPA" or "Agency") to establish the Acid Rain Program. The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from electric generating plants in order to reduce the adverse health and ecological impacts of acidic deposition (or acid rain) resulting from such emissions. This final rule is intended to promote participation in the title IV opt-in program by clarifying existing regulations, allowing a limited exception to the general rule of one designated representative for all affected units at a source, revising the conditions under which the Agency may cancel current-year allowance allocations, and allowing thermal energy plans to be effective on a quarterly basis.

DATES: This rule is effective May 18, 1998.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these final rule revisions. Under section 307(b)(2) of the Act, the requirements that are the subject of today's document may not be challenged in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–97–23, containing supporting information used to develop the rule is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski at (202) 564–9074, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460; or

the Acid Rain Hotline at (202) 564–9620. Electronic copies of this rulemaking can be accessed through the Acid Rain Division website at www.epa.gov/acidrain.

SUPPLEMENTARY INFORMATION:

I. Affected Entities

Entities potentially affected by this action are fossil fuel fired boilers or turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers from a wide range of industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 74.2 of title 40 of the Code of Federal Regulations and the revised §§ 72.6, 72.7, 72.8, and 72.14 (62 FR 55460, 55476–80, October 24, 1997). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

The overall goal of the Acid Rain Program is to achieve significant environmental benefits through reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), the primary precursors of acid rain. To achieve this goal at the lowest cost to society, the program employs both traditional and innovative, market-based approaches for controlling air pollution. In addition, the program encourages energy efficiency and promotes pollution prevention.

The Acid Rain Program departs from traditional regulatory methods by introducing an SO_2 allowance trading system that lowers the cost of reducing emissions by allowing electric utilities to seek out the least costly methods of control. Affected utility units under title IV of the Act are allocated allowances based on formulas in the Act. These units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual SO_2 emissions.

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for SO_2-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate through the opt-in program. Entry of sources into the opt-in program is voluntary. Opt-in sources are allocated allowances and, by making cost-effective emissions reductions so that their allowance allocations will exceed their emissions, will have allowances that may be sold in the SO_2 allowance trading system. These allowances provide greater compliance flexibility for affected units.

In 1995, EPA issued final opt-in regulations implementing section 410 (60 FR 17100, April 4, 1995). On June 5, 1995, an owner of several potential opt-in sources filed a petition for review of the existing opt-in regulations. The litigation was settled on January 9, 1997. On September 25, 1997, EPA proposed opt-in regulation revisions, several of which resulted from that settlement.

III. Part 74: Opt-Ins

A. Designated Representative

Under the existing opt-in rule, combustion or process sources located at the same source as affected units are required to have the same designated representative as the affected utility units. *See* 40 CFR 74.4(b). (Hereinafter, this requirement is referred to as the "single-designated-representative requirement".) Based on comments and settlement of litigation on the issue, EPA proposed to establish a procedure for nonutility combustion or process sources located with affected utility units to elect an exception to the single-designated-representative requirement.

One comment was received on this proposed revision.[1] The commenter, who is a party to the January 9, 1997 opt-in rule settlement, generally supported allowing a separate designated representative for opt-in sources at the same source as affected utility units. However, the commenter objected to certain language in the proposed rule.

The proposed rule required that, in order to use the separate designated representative provision, a combustion source must have "no owner of which the principal business is the sale, transmission, or distribution of electricity or that is a public utility under the jurisdiction of a State or local utility regulatory commission." The commenter claimed that the language concerning the principal business of the combustion source owner would bar a combustion source owned by a wholly-owned electric generating subsidiary of an industrial company from using the provision but would allow use of the provision if the source was instead directly owned by the industrial company. According to the commenter, the use of "separate corporate forms" should not have this effect on the ability to have a separate designated representative. The commenter also claimed that, even if a State utility regulatory authority did not currently regulate the wholly-owned electric generating subsidiary, the State authority might assert jurisdiction sometime in the future, thereby preventing use of the provision.

In light of the commenter's objections and in order to reduce the complexity of the separate designated representative provision, EPA is revising, in today's final rule, the proposed provision. On one hand, as discussed in the proposal, the provision is intended to encourage nonutility opt-ins by allowing a nonutility opt-in source located at the same source as utility units to select a different designated representative than the utility units. 62 FR 50457. Because a nonutility opt-in source is part of industrial operations (e.g., produces electricity for use in the owner's industrial facilities), the owner is more likely to have heightened concern about competitive disadvantage and maintaining the confidentiality of information about the opt-in source and related industrial operations. Having a single designated representative for a nonutility opt-in source and utility units may make information (e.g., the industrial company's electricity generating costs and processes using electricity) available to the designated representative, who may be an employee of the utility owner. On the other hand, as discussed in the proposal, EPA believes that generally opt-in sources should face the same requirements as other affected units. *Id.; see also* 58 FR 50088, 50090–91,

[1] One comment received during the comment period for the proposed opt-in revisions addressed a number of matters, but did not comment on any of the proposed opt-in revisions. The comment is therefore outside the scope of this rulemaking.

September 24, 1993. Balancing the importance of imposing consistent requirements on opt-in sources and utility units against the desire to encourage industrial opt-ins, EPA concludes that it should allow only a limited exception—applicable in a few cases—to the single-designated-representative requirement. While the proposal carved out a limited exception using a test focused on the owner (i.e., the nature of, and regulatory jurisdiction over, the owner's principal business) of the opt-in sources, EPA maintains that a simpler approach is available, i.e., one focused on the opt-in source itself. The Acid Rain regulations specifically address four categories of combustion sources that are unaffected units and that therefore may qualify as opt-in sources: (1) combustion devices that have not served, and do not serve, generators producing electricity for sale; (2) simple combustion turbines that commenced operation before November 15, 1990; (3) combustion devices that commenced commercial operation before November 15, 1990 and that have served, and serve, only generators of 25 MWe or less producing electricity for sale; and (4) cogeneration, qualifying, independent power production, or solid waste incineration facilities that meet certain requirements. *See* 40 CFR 72.6(b) (explaining the categories of unaffected units) and 74.2 (stating that affected units under § 72.6 are not eligible to be opt-in sources). The limited exception to the single-designated-representative requirement is aimed at the first category of combustion source, i.e., units that are part of industrial, not utility operations. No commenter has suggested that the exception should be extended to any other categories of combustion sources.

EPA notes, in addition, that sources other than those in the first category would generally not be eligible for the exception as originally proposed because they would most likely be part of utility operations and the proposal barred sources whose owners are principally in the business of selling, transmitting, or distributing electricity or are subject to State or local utility regulation. Moreover, for the reasons discussed above, EPA maintains that it should limit the exception to the clearest cases where the single-designated-representative requirement may inhibit entry into, or continued participation in, the opt-in program: i.e., the few cases where an opt-in source is co-located with utility units and is involved in industrial, rather than utility (i.e., electricity sales), operations.

Consequently, today's final rule limits the use of the exception to a combustion source (or process source) that, on the date on which the source's initial opt-in application is submitted and thereafter, does not serve a generator producing electricity for sale. Such a combustion or process source that is located at the same source as affected utility units may elect to have a different designated representative than the utility units. For example, a combustion source that is owned by an industrial company and that is used exclusively to generate electricity for use in the industrial company's industrial facilities could qualify for the exception to the single-designated-representative requirement. Similarly, such a combustion source could qualify even if it is owned by the wholly-owned subsidiary of the industrial company, instead of being owned directly by the industrial company. This approach in today's final rule meets the commenter's concerns that the corporate form of ownership of the source, or law concerning the jurisdiction of the State utility regulatory commission, not change the applicability of the exception to a combustion source that would otherwise qualify for the exception.

With the approach of basing the exception on the fact that a combustion source is not, as of the submission of the initial opt-in permit application and thereafter, serving a generator producing electricity for sale, it is necessary to include a provision for termination of the exception if and when that requirement is no longer met in the future. Today's final rule therefore provides for automatic termination of the election of the exception when the requirements for election are no longer met and requires submission of a superseding certificate of representation consistent with single-designated-representative requirement for all affected units at a given source. This is analogous to the automatic termination provisions for other exceptions under the Acid Rain Program. *See* 40 CFR 72.7(f)(4) (new units exemption) 72.8(d)(6), (retired units exemption), and 72.14(d)(4) (industrial utility-units exemption).

B. Thermal Energy Plans

The existing opt-in rule allows combustion sources to become opt-in sources at the beginning of any calendar quarter, not only at the beginning of a calendar year. *See* 40 CFR 74.28. However, in the proposed revisions to the rule, EPA noted that the thermal energy provision at § 74.47 only provided for calendar year plans. Therefore, EPA proposed revisions to allow (and take account of the possibility of) the submission of thermal energy plans at the beginning of any calendar quarter. No comments were received on these proposed revisions. With one exception, EPA has finalized the proposed revisions for the reasons stated in the proposal.

The only change, in today's final rule, to the proposed revisions is that EPA is not adopting the proposed revisions to paragraph (a)(3)(vii) of § 74.47. The existing rule requires the thermal energy plan to include the "allowable SO_2 emissions rate" for the calendar year in which the plan will take effect. In § 72.2, "allowable SO_2 emissions rate" is defined as the "most stringent federally enforceable emissions limitation for sulfur dioxide * * * for the specified calendar year". 40 CFR 72.2. The proposal added references in § 74.47(a)(3)(vii) to the allowable SO_2 emissions rate for the calendar year and month for which the thermal energy plan will take effect. This change would be inconsistent with the above-quoted definition in § 72.2 and so is not being adopted.

As already provided in the existing rule, if more than one federally enforceable emissions limitation applies during the year, the allowable SO_2 emission rate in § 74.47(a)(3)(vii) will be the most stringent of these limits.

C. Deduction of Allowances From ATS Accounts

For any affected unit, including an opt-in source, EPA draws upon future-year allowances in the affected unit's Allowance Tracking System (ATS) account to offset excess emissions for a year for which compliance is being determined. *See* 40 CFR 77.5. However, under the existing opt-in rule, when the opt-in source shuts down, is reconstructed, becomes an affected unit under § 72.6, or fails to renew its opt-in permit, EPA eliminates future-year allowance allocations (40 CFR 74.46) and retains the option of canceling current-year opt-in allowance allocations (including allowances that have been transferred to other ATS accounts) in order to offset excess emissions or account for the termination of participation in the opt-in program (40 CFR 74.50). As proposed, EPA is revising the rule to provide that an opt-in allowance may not be deducted under § 74.50(a) from any ATS account, other than the account of the opt-in source allocated such allowance, (i) after EPA has completed the process of recordation as set forth in § 73.34(a) following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used or (ii) if the

opt-in source claims in an annual compliance certification report an estimated reduction in heat input from improved efficiency, under § 74.44(a)(1)(B), after EPA has completed action on the confirmation report concerning such claimed reduction pursuant to §§ 74.44(c)(2)(iii)(E)(3)–(E)(5) for the year for which such allowance may first be used. No comments were received on this revision, and, for the reasons stated in the proposal, the revision is adopted as proposed.

D. Miscellaneous

EPA proposed a number of modifications and corrections to the combustion source opt-in rules to reflect changes in the Acid Rain Program and operating permits program under title V of the Clean Air Act since the publication of the final opt-in rule on April 4, 1995. In particular, the Agency has finalized the operating permits rule in part 71 and the Acid Rain permit rule in part 72. The proposed modifications and corrections were described in the "Miscellaneous" section of the preamble to the proposal. No comments were received, and the proposed changes are adopted as final.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735, October 4, 1993, the Administrator must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action." As such, this action is not subject to the requirements of the order and was not submitted to OMB for review.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency 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 requires the Agency 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, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the 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, the Agency is not required to develop a plan with regard to small governments.

The revisions to part 74 will not have a significant or unique effect on any regulated entities or State permitting authorities. Moreover, the revisions potentially reduce the burden on certain opt-in sources, by allowing the election of a separate designated representative and by allowing thermal energy plans to begin on the calendar quarter. Also, the revisions potentially reduce the burden on the utility sector by limiting when EPA may deduct allowances from ATS accounts.

C. Paperwork Reduction Act

These revisions to the opt-in rule would not impose any new information collection burden. OMB has previously approved the information collection requirements contained in the opt-in rules, 40 CFR part 74, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0258. 60 FR 17111.

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.

Copies of the original ICR may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency, 401 M St. SW. (2137), Washington, D.C. 20460 or by calling (202) 260–2740.

D. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. In the preamble of the April 4, 1995 opt-in rule, the Administrator certified that the rule, including the provisions revised by today's rule, would not have a significant economic impact on small entities. 60 FR 17111. Today's revisions are not significant enough to change the overall economic impact addressed in the April 4, 1995 preamble. Moreover, as discussed above, the revisions provide regulated entities with additional flexibility (e.g., the option to have a separate designated representative and to have a thermal energy plan that begins in the second, or later, quarter of the year).

E. 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).

List of Subjects in 40 CFR Part 74

Environmental protection, Acid rain, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 9, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 74 is amended as set forth below.

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

§ 74.3 [Amended]

2. Section 74.3 is amended by:

i. In paragraph (b), revising the words "parts 70 and 72" to read "parts 70, 71, and 72";

ii. In paragraph (b), revising the words "part 70" to read "parts 70 and 71"; and

iii. Adding at the end of paragraph (d) the words ",consistent with subpart E of this part."

3. Section 74.4 is amended by adding paragraph (c) to read as follows:

§ 74.4 Designated representative.

* * * * *

(c)(1) Notwithstanding paragraph (b) of this section, a certifying official of a combustion or process source that is located at the same source as one or more affected utility units and that, on the date on which an initial opt-in permit application is submitted for such combustion or process source and thereafter, does not serve a generator that produces electricity for sale may elect to designate, for such combustion or process source, a different designated representative than the designated representative for the affected utility units.

(2) In order to make such an election, the certifying official shall submit to the Administrator, in a format prescribed by the Administrator: a certification that the combustion or process source for which the election is made meets each of the requirements for election in paragraph (c)(1) of this section; and a certificate of representation for the designated representative of the combustion or process source in accordance with § 72.24 of this chapter. The Administrator will rely on such certificate of representation in accordance with § 72.25 of this chapter, unless the Administrator determines that the requirements for election in paragraph (c)(1) of this section are not met. If, after the election is made, the requirements for election in paragraph (c)(1) of this section are no longer met, the election shall automatically terminate on the first date on which the requirements are no longer met and, within 30 days of that date, a certificate of representation for the designated representative of the combustion or process source shall be submitted consistent with paragraph (b) of this section.

§ 74.10 [Amended]

4. Section 74.10 is amended by, in paragraph (a)(2), revising the word "§ 74.62" to read "§ 75.20 of this chapter".

§ 74.14 [Amended]

5. Section 74.14 is amended by:

i. In paragraph (b) introductory text, revising the words "part 70" to read "parts 70 and 71"; and

ii. In paragraph (b)(6)(ii), revising the word "approved" to read "approved for operating permits".

§ 74.16 [Amended]

6. Section 74.16 is amended by, in paragraph (a)(12), adding the words "and does not have an exemption under § 72.7, § 72.8, or § 72.14 of this chapter" before the semicolon.

§ 74.18 [Amended]

7. Section 74.18 is amended by:

i. In paragraph (d), revising the words "§ 74.46(c)" to read "§ 74.46(b)(2)"; and

ii. Removing the last sentence from paragraph (e).

§ 74.22 [Amended]

8. Section 74.22 is amended by, in paragraph (c)(2), revising the words "§ 74.20(a)(2)(A)" to read "§ 74.20(a)(2)(i)".

§ 74.26 [Amended]

9. Section 74.26 is amended by, in paragraph (a)(2), revising the words "in which" to read "for which".

§ 74.42 [Amended]

10. Section 74.42 is amended by removing from paragraph (a) the word "(a)".

§ 74.44 [Amended]

11. Section 74.44 is amended by:

i. In paragraph (a)(1)(i)(G), revising the words "demand side measures that improve the efficiency of electricity or steam consumption" to read "specific measures";

ii. In paragraph (a)(2)(i), removing the words "or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in accordance with § 74.47 of this chapter";

iii. In paragraph (a)(2)(iii), adding the words "of this section" after the word "(a)(2)(ii)";

iv. In paragraph (c)(2)(ii)(B)(*1*), revising the words "opt-in sources." to read "opt-in sources and Phase I units.";

v. In paragraph (c)(2)(iii)(F), revising the formula to read as follows:

$$\text{Allowances allocated or acquired} - \text{tons emitted} - \text{the larger of} \left(\begin{array}{c} \text{allowances transferred} \\ \text{to all replacement units} \\ \text{or} \\ \text{allowances deducted} \\ \text{for reduced utilization} \end{array} \right)$$

vi. In paragraph (c)(2)(iii)(F), revising the words " 'Allowances allocated' shall be the original number of allowances allocated under section § 74.40 for the calendar year." to read " 'Allowances allocated or acquired' shall be the number of allowances held in the source's compliance subaccount at the allowance transfer deadline plus the number of allowances transferred for the previous calendar year to all replacement units under an approved thermal energy plan in accordance with § 74.47(a)(6).''; and

vii. In paragraph (c)(2)(iii)(E)(*3*), revising the words "allowances necessary" to read "allowances that he or she determines is necessary".

12. Section 74.47 is amended by:

i. Adding in paragraph (a)(3)(i), after the word "year" in each place it appears, the word "and quarter"; and

ii. Revising paragraphs (a)(1), (a)(3)(viii), (a)(3)(ix), (a)(3)(x), (a)(3)(xi), (a)(3)(xii), and (a)(4) to read as follows:

§ 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.

(a) Thermal energy plan. (i) General provisions. The designated representative of an opt-in source that seeks to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit shall submit a thermal energy plan subject to the requirements of § 72.40(b) of this chapter for multi-unit compliance options and this section. The effective period of the thermal energy plan shall begin at the start of the calendar quarter (January 1, April 1, July 1, or October 1) for which the plan is approved and end December 31 of the last full calendar year for which the opt-in permit containing the plan is in effect.

* * * * *

(3) * * *

(viii) The estimated annual amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy to be reduced starting April 1, July 1, or October 1 respectively and ending on December 31;

(ix) The estimated amount of total thermal energy at each replacement unit for the calendar year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy for the portion of such calendar year starting April 1, July 1, or October 1 respectively;

(x) The estimated annual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, and, for a plan starting April 1, July 1, or October 1, such estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xi) The estimated annual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing thermal energy at the opt-in source, and, for a plan starting April 1, July 1, or October 1, such estimated amount of thermal energy replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

(xii) The estimated annual total fuel input at each replacement unit after replacing thermal energy at the opt-in source and, for a plan starting April 1, July 1, or October 1, such estimated total fuel input after replacing thermal energy at the opt-in source starting April 1, July 1, or October 1 respectively and ending December 31;

* * * * *

(4) *Submission.* The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than six months prior to the first calendar quarter for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

* * * * *

13. Section 74.50 is amended by redesignating the introductory text of paragraph (a) as paragraph (a)(1), redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv), and adding paragraph (a)(2) to read as follows:

§ 74.50 Deducting opt-in source allowances from ATS accounts.

(a) * * *

(2) An opt-in allowance may not be deducted under paragraph (a)(1) of this section from any Allowance Tracking System Account other than the account of the opt-in source allocated such allowance:

(i) After the Administrator has completed the process of recordation as set forth in § 73.34(a) of this chapter following the deduction of allowances from the opt-in source's compliance subaccount for the year for which such allowance may first be used; or

(ii) If the opt-in source includes in the annual compliance certification report estimates of any reduction in heat input resulting from improved efficiency under § 74.44(a)(1)(i), after the Administrator has completed action on the confirmation report concerning such estimated reduction pursuant to § 74.44(c)(2)(iii)(E)(*3*), (*4*), and (*5*) for the year for which such allowance may first be used.

* * * * *

[FR Doc. 98–10143 Filed 4–15–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–118; RM–9061]

Radio Broadcasting Services; Pentwater and Walhalla, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 255A to Walhalla, Michigan, in response to a petition filed by Roger Lewis Hoppe II. *See* 12 FCC Rcd 4127 (1997). There is a site restriction 6.3 kilometers southwest of the community. Canadian concurrence has been obtained for the allotment of Channel 255A at Walhalla at coordinates 43–54–08 and 86–10–13. A one-step application filed by Bay View Broadcasting, Inc. requesting the substitution of Channel 274A for Channel 276A at Pentwater, Michigan, has been considered as a counterproposal in this proceeding (BPH–970319IE). The allotment of Channel 255A at Walhalla instead of Channel 274A removes the conflict with the pending application at Pentwater. With this action, this proceeding is terminated. A filing window for Channel 255A at Walhalla, Michigan, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–118, adopted March 25, 1998, and released April 3, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc.,1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800; facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Walhalla, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–10135 Filed 4–15–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–136; RM–9083 and RM–9136]

Radio Broadcasting Services; Ironton, Malden and Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 225C2 for Channel 225C3 at Malden, Missouri, and modifies the license for Station KMAL(FM) to specify operation on Channel 225C2 in response to a petition filed by B.B.C., Inc. *See* 62 FR 29090, May 29, 1997. The coordinates for Channel 225C2 at Malden are 36–39–48 and 89–47–39. To accommodate the allotment at Malden, we shall substitute Channel 224A for Channel 225A at Ironton, Missouri, and modify the license for Station KYLS accordingly. The coordinates for Channel 224A at Ironton are 37–34–23 and 90–41–35. A joint counterproposal filed by B.B.C., Inc. and Dockins Communications, Inc., licensee of Station KYLS, Ironton, is not being considered. The counterproposal supported the allotment at Malden but requested the substitution of Channel 240C3 for Channel 225A at Ironton and the substitution of Channel 225A for Channel 240A at Salem, Missouri. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No.97–136, adopted March 25, 1998, and released April 3, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303,334,336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 225C3 and adding Channel 225C2 at Malden, and by removing Channel 225A and adding Channel 224A at Ironton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–10134 Filed 4–15–98; 8:45 am]

BILLING CODE 6712–01–F

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 515, 552 and 570

[APD 2800.12A, CHGE 79]

RIN 3090–AG70

Acquisition Regulation; Negotiation Procedures for Acquisition of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to update negotiation procedures for acquisitions of leasehold interests in real property. The changes make GSAR Part 570 consistent, where applicable, with Federal Acquisition Regulation (FAR) Part 15, as revised by Federal Acquisition Circular (FAC) 97–02. The changes also update FAR provisions and clauses applicable to acquisitions of leasehold interests in real property.

DATES: Effective date April 16, 1998. Comments should be submitted in writing to the address shown below on or before June 15, 1998.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4012, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

GSA issues regulations for acquiring leasehold interests in real property under the authority of 40 U.S.C. 486(c), including source selection procedures. Many of the source selection procedures for acquiring leasehold interests in real property are based on FAR Part 15. FAC 97–02 made significant revisions to FAR Part 15, infusing innovative techniques into the source selection process, simplifying the acquisition process, incorporating changes in pricing proposal policy, and facilitating the acquisition of best value. In order to take advantage of the innovations and simpler procedures incorporated into FAR part 15 by FAC 97–02 and to minimize potential confusion, GSA is updating 48 CFR part 570 to ensure consistency with FAR part 15 where applicable. The changes provide more flexibility in exchanges with industry, change the standard for admission into the competitive range (to all proposal most highly rated), simplify documentation requirements, ensure that procedures for addressing adverse past performance are consistent with FAR Part 15, and ensure that procedures for obtaining and analyzing cost or pricing data or information other than cost or pricing data remain consistent with FAR Part 15. The changes also delete the requirement for a Certificate of Procurement Integrity and a Contingent Fee Representation and Agreement, consistent with earlier changes made to FAR Part 3.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. The impact on small businesses derives from the changes made to the FAR rule, and

the impacts were discussed in that rule's Final Regulatory Flexibility Analysis.

C. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule ensures that procedures for acquiring leasehold interests in real property remain consistent, where applicable, with the changes made to FAR Part 15. Consistency will help minimize confusion that would result from separate and different procedures. It also provides that the innovative source selection techniques, simpler processes, and changes in pricing policy introduced in FAR Part 15 will facilitate the acquisition of best value leasehold interests in real property. Elimination of burdens and creation of a simplified, efficient, and impartial acquisition process benefits all participants in Government contracting, especially small businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Determination to Issue an Interim Rule

Urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. The changes to FAR Part 15 have been in effect since January 1, 1998. The changes are sufficiently important that GSA must update the GSAR immediately. GSA believes this rule will provide significant benefits to both the Federal Government and contractors. It will allow GSA and agencies delegated leasing authority to reduce the resources necessary for source selection and reduce time to contract award. It will ensure that the Government receives the best value when acquiring leasehold interests in real property while ensuring fair treatment of offerors. The rule will also eliminate the potential for confusion by reducing the difference in procedures for acquiring supplies and services and procedures for acquiring leasehold interests in real property.

List of Subjects in 48 CFR Parts 503, 515, 552, and 570

Government procurement.

Accordingly, 48 CFR 570 is amended as follows:

1. The authority citation for 48 CFR Parts 503, 515, 552, and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 503.104–10 is revised to read as follows:

503.104–10 Solicitation provisions and contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 552.203–73, Price Adjustments for Illegal or Improper Activity, in solicitations and contracts for the acquisition of leasehold interests in real property expected to exceed $100,000 and all modifications to leases exceeding $100,000 which do not already contain the clause.

3. Section 503.404 is amended by deleting paragraph (a) and removing the designation "(b)" from the remaining paragraph.

PART 515—CONTRACTING BY NEGOTIATION

4. Section 515.106–70 is amended by revising paragraph (a) to read as follows:

515.106–70 Examination of records by GSA clause.

(a) The contracting officer shall insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts (other than multiple award schedule contracts), including acquisitions of leasehold interests in real property that:

(1) Involve the use and disposition of Government-furnished property,

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan,

(3) Contain a price warranty or price reduction clause,

(4) Involve income to the Government where income is based on operations that are under the control of the contractor,

(5) Include an economic price adjustment clause,

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR part 16,

(7) Are subject to adjustment based on a negotiated cost escalation base, or

(8) Contain the provision at FAR 52,223–4, Recovered Material Certification. The contracting officer may modify the clause to define the specific area of audit (e.g., the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General-Auditing or Regional Inspector General-Auditing, as appropriate, must concur in any modifications to the clause.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.203–71 [Removed]

5. Section 552.203–71 is removed and reserved.

552.203–72 [Removed]

6. Section 552.203–72 is removed and reserved.

552.203–73 [Revised]

7. Section 552.203–73 is amended by revising the introductory text to read as follows:

552.203–73 Price Adjustments for Illegal or Improper Activity.

As prescribed in 503.104–10, insert the following clause:

* * * * *

8. Section 552.270–1 is revised to read as follows:

552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

As prescribed in 570.702(a), insert the following provision:

Instructions to Offerors—Acquisition of Leasehold Interests in Real Property (Mar 1998)

(a) Definitions. As used in this provision—

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing" or "written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain

unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages. Offers must be:

(i) Submitted on the forms prescribed and furnished by the Government as a part of this solicitation or on copies of those forms, and

(ii) Signed. The person signing an offer must initial each erasure or change appearing on any offer form. If the offeror is a partnership, the names of the partners composing the firm must be included with the offer.

(2) Late proposals and revisions.

(i) The Government will not consider any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers unless it is received before the Government makes award and it meets at least one of the following conditions:

(A) It was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th).

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation.

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals.

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement.

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(2)(i)(A) through (c)(2)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(2)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(2)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) An offeror may withdraw its proposal by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, an offeror may withdraw its proposal via facsimile received at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(3) Any information given to a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offeror.

(4) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(5) Offerors may submit amended proposals only if requested or allowed by the Contracting Officer.

(6) The Government will construe an offer to be in full and complete compliance with this solicitation unless the offer describes any deviation in the offer.

(7) Offerors may submit proposals that depart from stated requirements. Such a proposal shall clearly identify why the acceptance of the proposal would be advantageous to the Government. The proposal must clearly identify and explicitly define any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) Restriction on disclosure and use of data. An offeror that includes in its proposal data that it does not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, must meet both of the following conditions:

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a lease is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets].

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(e) Lease award.

(1) The Government intends to award a lease resulting from this solicitation to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a lease after conducting

discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

(5) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(6) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(7) The unconditional written acceptance of an offer establishes a valid contract.

(8) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection; and

(iii) A summary of the rationale for award.

(End of provision)

Alternate I (MAR 1998). As prescribed in 570.702(a)(1), substitute the following paragraph for paragraph (c)(2)(i) of the basic provision:

(i) Any offer received at the office designated in the solicitation after the exact time specified for receipt of final proposal revisions will not be considered unless it is received before award is made and it meets one of the following conditions—

Alternate II (DATE). As prescribed in 570.702(a)(2), substitute the following paragraph for paragraph (e)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a lease without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

9. Sections 552.270–2 and 552.270–3 are removed and reserved.

10. Section 552.270–4 is amended by revising the introductory text to read as follows:

552.270–4 Historic Preference.

As prescribed in 570.702(b), insert the following provision:

* * * * *

552.270–5 [Removed]

11. Section 552.270–5 is removed and reserved.

12. Section 552.270–6 is amended by revising the introductory text to read as follows:

552.270–6 Parties to Execute Lease.

As prescribed in 570.702(c), insert the following provision:

* * * * *

13. Section 552.270–20 is amended by revising the clause date and paragraph (c) to read as follows:

552.270–20 Proposals for Adjustment.

* * * * *

PROPOSALS FOR ADJUSTMENT (APR 1998)

* * * * *

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $500,000—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403–4); and

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406–2).

* * * * *

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

14. Section 570.107 is added as follows:

570.107 Oral presentations.

Oral presentations may be used for acquisitions of leasehold interests in real property. Follow the procedures in FAR 15.102.

15. Section 570.204–4 is revised to read as follows:

570.204–4 Negotiation, evaluation, and award.

(a) Negotiations, if applicable, should be conducted in accordance with 570.305.

(b) Offers must be evaluated in accordance with the solicitation. The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices. In cases where the total cost exceeds $500,000, cost and pricing data must be obtained unless the requirement is waived or one of the exceptions at FAR 15.403–1 applies. For purposes of FAR 15.403–1(c)(1)(iii), "same or similar items" means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) An acceptable small business subcontracting plan must be provided if the total contract value of the lease will exceed $500,000, unless the lease will be awarded to a small business concern.

(d) The contracting officer should review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

(e) An award will be made to the responsible offeror whose proposal represents the best value after evaluation considering price and other factors included in the solicitation.

16. Section 570.303 is amended by revising paragraphs (a)(7)(i) and (a)(8) as follows:

570.303 Solicitation for offers (SFO).

(a) * * *

(7) * * *

(i) Unless the design-build selection procedures are being used as authorized by 570.106(c), the solicitation must comply with FAR 15.304 and either:

(A) FAR 15.101–1 if the Government will use the tradeoff process, or

(B) FAR 15.101–2 if the Government will use the lowest price technically acceptable source selection process.

* * * * *

(8) Include a statement outlining the information that may be disclosed in preaward and postaward debriefings.

* * * * *

17. Section 570.305 is revised to read as follows:

570.305 Negotiations.

(a) Follow the procedures in FAR 15.306 and 15.307 for exchanges (including clarifications, communications, negotiations, and discussions) and revisions.

(b) Place a written record of all exchanges in the lease file.

(c) Provide prompt written notice to any offeror excluded from the competitive range or otherwise eliminated from the competition in accordance with FAR 15.503(a)(1).

570.306 [Removed]

18. Section 570.306 is removed and reserved.

19. Section 570.307 is revised to read as follows:

570.307 Late offers, modifications of offers, and withdrawals of offers.

Offers determined to be received late will be handled in accordance with FAR 15.208.

570.308–1 [Amended]

20. Section 570.308–1 is amended by deleting paragraph (b) and redesignating paragraph (c) as paragraph (b).

21. Section 570.308–2 is revised to read as follows:

570.308–2 Cost or pricing data.

(a) Cost or pricing data are required under the circumstances described in FAR 15.403–4.

(b) The exceptions to and waivers of submission of cost or pricing data outlined in FAR 15.403–1 apply to leasing actions. For purposes of FAR 15.403–1(c)(1)(iii), "same or similar items" means similar space leased to the general public. A market survey and/or an appraisal conducted in accordance with accepted real property appraisal procedures may be used as evidence to establish the price reasonableness.

(c) In exceptional cases, the requirement for submission of cost or pricing data may be waived under FAR 15.403–1(c)(4).

(d) When cost or pricing data is required, the contracting officer shall follow the procedural requirements in FAR 15.403–5.

22. Section 570.308–3 is revised to read as follows:

570.308–3 Proposal evaluation.

(a) Offers must be evaluated in accordance with the solicitation.

(b) The contracting officer shall evaluate the price and document the lease file to demonstrate that the proposed contract prices represent fair and reasonable prices.

(c) The contracting officer shall evaluate past performance in accordance with FAR 15.305(a)(2).

(d) The lease file must document the evaluation of other award factors listed in the solicitation. The file must include the basis for evaluation, an analysis of each offer, and a summary of findings. An abstract of final proposal revisions may be prepared to aid in the analysis of offers received.

23. Section 570.309 is revised to read as follows:

570.309 Award.

(a) As used in this section, "day" has the meaning set forth at FAR 33.101.

(b) The contracting officer is designated as the source selection authority unless the Head of the Contracting Activity appoints another individual for a particular leasing action or group of leasing actions.

(c) An award will be made to the responsible offeror whose proposal represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(d) Award will be made in writing within the timeframe specified in the SFO. If an award cannot be made within that time, the contracting officer shall request in writing from each offeror an extension of the acceptance period through a specific date.

(e) Unsuccessful offerors will be notified in writing or electronically in accordance with FAR 15.503(b).

(f) The source selection authority may reject all proposals received in response to an SFO, if doing so is in the best interest of the Government.

24. Section 570.310 is revised to read as follows:

570.310 Debriefings.

The procedures in FAR 15.505 and 15.506 apply to leasing actions.

25. Section 570.401 is revised to read as follows:

570.401 Disclosure of mistakes after award.

When a mistake in a lessor's offer is not discovered until after award, the mistake should be handled as provided in FAR 14.407–4 and subpart 514.4.

26. Section 570.602–2 is amended by revising paragraphs (c)(3), (d), (e)(3), and (f)(3) to read as follows:

570.602–2 Procedures.

* * * * *

(c) * * *

(3) The requirements for the submission of cost or pricing data outlined in FAR 15.403–4, 15.403–5, and 15.406–2 apply to alteration projects over $500,000. The procedural requirements at FAR 15.403–5 must be followed when requesting cost and pricing data. Exceptions or waivers to submission of cost or pricing data must be processed in accordance with the requirements of FAR 15.403–1. If the lease does not include the clauses at FAR 52.215–10 and 52.215–12 or the clauses at FAR 52.215–11 and 52.215–13, the modification to the lease for the alterations must add the clauses at FAR 52.215–11 and 52.215–13 if cost and pricing data is submitted.

(d) *Audits.* Unless the cost or pricing data requirement is exempt or waived in accordance with FAR 15.403–1, an audit must be requested for negotiated alteration projects which are not competed as a part of the lease and exceed $500,000.

(e) * * *

(3) Analyze profit in accordance with FAR 15.404–4 if the project exceeds $100,000; and

* * * * *

(f) * * *

(3) Negotiations must be documented in accordance with FAR 15.406–3.

* * * * *

27. Section 570.701 is amended by revising paragraphs (c), (d), (f), (g), (h), (j), and (k) to read as follows:

570. 701 FAR provisions and clauses.

* * * * *

(c) All solicitations and contracts which exceed $2,500 must include the following provisions/clauses:

FAR part 52 cite	Title
52.219–1	Small Business Program Representations.
52.222–36 ..	Affirmative Action for Handicapped Workers.

(d) All solicitations and contracts which exceed $10,000 must include the following provisions/clauses:

FAR part 52 cite	Title
52.222–21 ..	Certification of Nonsegregated Facilities.
52.222–22 ..	Previous Contracts and Compliance Reports.
52.222–25 ..	Affirmative Action Compliance.
52.222–26 ..	Equal Opportunity.
52.222–35 ..	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
52.222–37 ..	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.

* * * * *

(f) All solicitations and contracts which exceed $100,000 must include the following FAR provisions/clauses:

FAR part 52 cite	Title
52.203–11 ..	Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(g) All solicitations and contracts for actions which exceed the simplified lease acquisition threshold must include the following FAR provisions/clauses:

FAR part 52 cite	Title
52.203–2	Certificate of Independent Price Determination.
52.203–7	Anti-Kickback Procedures.

FAR part 52 cite	Title
52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
52.215–2	Audits and Records—Negotiation.
52.219–8	Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns.
52.223–6	Drug-Free Workplace.
52.233–2	Service of Protest (Solicitations only).

(h) All solicitations and contracts which exceed $500,000 must include the FAR clauses at 52.219–9, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, and 52.219–16, Liquidated Damages—Subcontracting Plan.

* * * * *

(j) When cost or pricing data is required for work or service exceeding $500,000 the FAR clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–12, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(k) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals, the solicitation must include the FAR provision at 52.215–5, Facsimile Proposals.

28. Section 570.702 is revised to read as follows:

570.702 Solicitation provisions.

When a solicitation for offers is issued, the contracting officer should include provisions substantially the same as the following unless the contracting officer makes a determination that use of one or more of the provisions is not appropriate:

(a) 552.270–1 Instructions to Offerors—Acquisition of Leasehold Interests in Real Property.

(1) Use Alternate I if the contracting officer decides that it is advantageous to the Government to allow offers to be submitted up to the exact time specified for receipt of final proposal revisions.

(2) Use Alternate II if the Government intends to award without discussions.

(b) 552.270–4 Historic Preference.

(c) 552.270–6 Parties to Execute Lease.

29. Section 570.703 is amended by deleting paragraph (a)(25) and redesignating paragraph (a)(26) as (a)(25).

30. Section 570.704 is revised to read as follows:

570.704 Use of provisions and clauses.

The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., GSAR 552.203–5, Covenant Against Contingent Fees, FAR 52.215–2, Audit and Records—Negotiation, etc.) in order to modify the language of the provision or clause, when permitted by the statute. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause. Also, certain clauses required by non-GSA regulations require approval of the issuing agency before the contracting officer can delete or modify them (e.g., 52.222–26, Equal Opportunity; 52.222–35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era; and 52.222–36 Affirmative Action for Handicapped Workers, require the approval of the Department of Labor's Office of Federal Contract Compliance Programs before they can be deleted from or modified in the SFO or lease).

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–9942 Filed 4–15–98; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 041098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Gulf of Alaska

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

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning the initial reserve of Pacific cod in the Gulf of Alaska (GOA). This action is necessary to allow incidental catch of Pacific cod to be retained in other directed fisheries and to account for previous harvest of the total allowable catch (TAC) in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 16, 1998, through 2400 hrs, A.l.t., December 31, 1998. Comments must be received by May 1, 1998.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The initial TAC of Pacific cod in the Western, Central, and Eastern Regulatory Areas of the GOA was established by the Final 1998 Harvest Specifications for Groundfish of the GOA (63 FR 12027, March 12, 1998) as 18,536 mt, 33,374 mt, and 936 mt in the Western, Central, and Eastern Regulatory Areas, respectively. Directed fishing for Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA was closed on March 3, 1998 (63 FR 11160, March 6, 1998), and in the Central Regulatory Area on March 10, 1998 (63 FR 12416, March 13, 1998), under § 679.20(d)(1)(iii) to prevent exceeding the allocation for processing by the inshore component in these areas.

The reserve of Pacific cod in the GOA was withheld under the Final 1998 Harvest Specifications for Groundfish of the GOA (63 FR 12027, March 12, 1998) as a management buffer to prevent exceeding the TACs and to provide greater assurance that Pacific cod could be retained as bycatch throughout the fishing year.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs for Pacific cod in the GOA need to be supplemented from the Pacific cod reserve to allow the retention of incidental catch of Pacific cod in other fisheries and to account for prior harvest. Therefore, in accordance with § 679.20(b)(3)(i)(A), NMFS is apportioning 13,214 mt of Pacific cod from the reserve to the TAC in the GOA: 4,634 mt in the Western, 8,346 mt in the Central, and 234 mt in the Eastern Regulatory Areas.

Pursuant to § 679.20(a)(6)(iii), 90 percent and 10 percent of the

apportionment of the Pacific cod reserve in the GOA is allocated to vessels catching Pacific cod for processing by the inshore and offshore components respectively. This action increases the total allocation of the 1998 Pacific cod TACs for vessels catching Pacific cod for processing by the inshore component to 20,853 mt, 37,548 mt, and 1,053 mt in the Western, Central, and Eastern Regulatory Areas, respectively, and for the offshore component to 2,317 mt, 4,172 mt and 117 mt in the Western, Central, and Eastern Regulatory Areas, respectively.

In accordance with § 679.20 (b)(3)(iii)(A), NMFS finds that good cause exists for not providing the public with a prior opportunity to comment. As of March 21, 1998, NMFS estimates the amount of the Pacific cod initial TACs allocated to the inshore component in the Western and the Central Regulatory Areas of the GOA of 16,682 mt and 30,037 mt, respectively have been reached. This action is necessary to allow retention of amounts of Pacific cod that are caught incidentally while conducting directed fishing for other species in these areas.

Maximum retainable bycatch amounts may be found at § 679.20(e) and (f).

Classification

This action responds to the initial TAC limitations for Pacific cod established in the Final 1998 Harvest Specifications for Groundfish in the GOA. This action will allow incidental catch of Pacific cod to be retained in other directed fisheries. The alternative is to prohibit retention of Pacific cod, which is contrary to the FMP goals of providing the opportunity to more fully use the available TACs and reduce discards. A delay in the effective date is impracticable and contrary to public interest as it relieves a potential restriction. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: April 10, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–10140 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 73
Thursday, April 16, 1998

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AH63

Pay Administration (General); Collection by Offset from Indebted Government Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed changes in the salary offset regulations to comply with the Debt Collection Improvement Act of 1996. The principal changes relate to the roles played by disbursing officials and debt collection centers with respect to salary offset. Also included are new expedited salary offset procedures for certain types of recent or small-amount debts.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2858, FAX: (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: For many years, Federal agencies have made deductions from employees' pay to recover debts owed to the Government. (See 5 U.S.C. 5514.) Office of Personnel Management (OPM) regulations provide specific requirements for collecting debts by offsetting salaries and procedures for employee notification and hearings.

The Debt Collection Improvement Act of 1996 (section 31001 of Public Law 104–134, April 26, 1996) (DCIA) made changes to maximize the collection of delinquent debts owed to the Government while minimizing the costs of debt collection by consolidating related functions and using interagency teams. The DCIA requires all Federal agencies to which outstanding delinquent debts are owed to participate in an annual computer match of their delinquent debt records with records of Federal employees. The Secretary of the Treasury is required to establish an inter-agency consortium to implement this centralized salary offset computer matching and promulgate regulations for that program.

In addition, the DCIA established mandatory centralized administrative offset. Under 31 U.S.C. 3716, Federal agencies are required to notify the Secretary of the Treasury of all debts which are over 180 days delinquent. Agencies may also notify the Secretary of the Treasury of any debt which is delinquent for 180 days or less. The Secretary of the Treasury and other Federal disbursing officials will match payments to the debtor from the Federal Government, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. Federal agencies must notify Treasury of all debts over 180 days delinquent, including debts owed by Federal employees which the agency seeks to collect from the employee's pay account at another agency. Thus, compliance with the administrative offset provisions of the DCIA will accomplish salary offset and negate the need to follow the procedures under section 550.1109 in these proposed regulations (currently section 550.1108). The procedures outlined in section 550.1109 will continue to apply, however, until salary offset can be accomplished by centralized administrative offset. It is anticipated that the procedures under section 550.1109 will eventually be eliminated.

The DCIA amended the salary offset law for Federal employees covered under 5 U.S.C. 5514 as follows:

(1) Pay adjustments made to correct clerical or administrative errors or delays if the overpayment occurred within the 4 pay periods preceding the adjustment, and collection of a debt amounting to $50 or less, are excluded from the normally required administrative procedures (e.g. notice and hearing).

(2) The definition of "agency" is modified to clarify that it includes executive departments and agencies; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; and Government corporations.

(3) In determining the order of deductions from pay, a levy pursuant to the Internal Revenue Code takes precedence over offsets under section 5514.

In response to these changes, OPM proposes regulatory changes needed to implement salary offsets by centralized administrative offset, accommodate the role of debt collection centers, modify definitions, limit the required procedures in some instances for small debts and for clerical or administrative errors or delays, and make other conforming or clarifying changes, including those described below.

OPM proposes to revise section 550.1102(b)(1) to remove the reference to debts arising under the Social Security Act in the listing of debts that are excluded from collection via salary offset. Under subsection (z)(2) of the DCIA, section 204 of the Social Security Act (42 U.S.C. 404) is amended to authorize the Commissioner of Social Security to collect delinquent claims by salary offset under 5 U.S.C. 5514.

OPM proposes to revise section 550.1102(b)(2) to reflect elimination of the General Accounting Office's role in waiving certain overpayment debt claims against Federal employees, consistent with Public Law 104–316 (October 19, 1996) and the Office of Management and Budget "Determination with Respect to the Transfer of Functions Pursuant to Public Law 104–316," dated December 17, 1996.

OPM proposes to revise section 550.1104(d)(3) to clarify that, in a salary offset notice to an employee, the "amount" of a deduction may be expressed as a percentage of pay, not to exceed 15 percent of disposable pay. The requirements to include the commencement date and duration of deductions in the salary offset notice are removed, since this information is not

required by law and its inclusion can pose an unnecessary administrative burden. Also, when the deduction amount is expressed as a percentage of disposable pay, which can change over a period of time, the duration of deductions cannot be specified. However, debtor employees can easily estimate the duration of deductions by dividing the total debt amount by the initial dollar amount of the initial deduction.

OPM proposes a new section 550.1107(c) to clarify that a determination of a hearing official that a debt may not be collected via salary offset under 5 U.S.C. 5514 does not preclude the creditor agency from seeking collection of a debt it considers to be valid through other appropriate means, since the hearing official's determination pertains only to salary offset. This is consistent with Comptroller General opinion B–211626, December 19, 1984.

When final regulations are published, covered agencies will be required to make necessary conforming changes in their agency salary offset regulations. Under 5 CFR 550.1105(b), significant proposed changes in creditor agency regulations must be submitted to OPM for review and approval. However, as long as these changes in agency regulations are made merely to conform with the changes made in OPM regulations, no OPM review will be required.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart K—Collection by Offset From Indebted Government Employees

1. The authority citation for subpart K of part 550 continues to read as follows:

Authority: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

2. In § 550.1102, paragraph (b) is revised to read as follows:

§ 550.1102 Scope.

* * * * *

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of the employee. Because salary offset is a type of administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this subpart should be consistent with the provisions of the Federal Claims Collections Standards (FCCS, as defined in § 550.1103) (dealing with administrative offset generally) and 31 CFR part 285 (dealing with centralized administrative offset under 31 U.S.C. 3716). Section 550.1108 addresses the use of centralized administrative offset procedures to effect salary offset. Generally, the procedures under § 550.1109 should apply only when centralized administrative offset cannot be accomplished.

(1) *Excluded debts.* The procedures contained in this subpart do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests.* This subpart does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the head of the responsible agency. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

3. In § 550.1103, the definitions of *agency, creditor agency, disposable pay,* and *FCCS* are revised, and the definition of *debt collection center* is added in alphabetical order, to read as follows:

§ 550.1103 Definitions.

* * * * *

Agency means an executive department or agency; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor Agency means the agency to which the debt is owed, including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in § 550.1110).

* * * * *

Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with parts 581 and 582 of this chapter). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (Title 26, United States Code) and deductions described in § 581.105 (b) through (f) of this chapter.

* * * * *

FCCS means the Federal Claims Collection Standards published in 4 CFR 101 through 105.

* * * * *

4. Section 550.1104 is amended, in paragraph (d), in the second sentence of the introductory text, by removing "or his designee" and adding in its place "(or authorized designee)"; in paragraph (d)(4), by adding "as defined in § 550.1103" after "FCCS"; in paragraph (d)(6), by removing "(4 CFR 102.2(e))" and adding in its place "(see the FCCS)"; in paragraph (e)(1), by adding the word "creditor" before the second appearance of the word "agency"; in paragraph (g)(2), by removing "4 CFR 102.3(c)" and adding in its place "the FCCS"; in paragraph (m), by removing "4 CFR 102.3" and adding in its place "the FCCS"; in paragraph (n), by removing "4 CFR 102.13" and adding in its place "the FCCS"; and by revising paragraphs (c) and (d)(3) to read as follows:

§ 550.1104 Agency regulations.

* * * * *

(c) *Exception to entitlement to notice, hearing, written responses, and final decisions.* In regulations covering internal collections, an agency shall except from the provisions of paragraph (b) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(d) * * *

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

* * * * *

§ 550.1106 [Amended]

5. Section 550.1106 is amended by removing "4 CFR 102.3(b)(3)" and adding "the FCCS as defined in § 550.1103" in its place.

§ 550.1107 Obtaining the services of a hearing official.

6. Section 550.1107 is amended, in paragraph (a), by removing "4 CFR 102.1" and adding "the FCCS as defined in § 550.1103" in its place; in paragraph (b), by removing "4 CFR 102.1" and adding "the FCCS" in its place; and by adding a new paragraph (c) to read as follows:

* * * * *

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under § 550.1108 or a paying agency under § 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

7. Section 550.1108 is redesignated as § 550.1109 and is amended by removing the "(b)" after "5514" in paragraph (a)(3), adding "claim" after the first appearance of "debt" in paragraph (b)(2), removing "creditor agency's" in paragraph (b)(3), and adding introductory text at the beginning of the section; and a new § 550.1108 is added to read as follows:

§ 550.1108 Requesting recovery through centralized administrative offset.

Under 31 U.S.C. 3716, creditor agencies must notify the Secretary of the Treasury of all debts over 180 days delinquent (as defined in the FCCS, see § 550.1103) so that recovery may be made by centralized administrative offset. This includes those debts the agency seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. Prior to offset of the pay account of an employee, an agency must comply with the requirements of 5 U.S.C. 5514, this subpart, and agency regulations issued thereunder. Specific procedures for notifying the Secretary of the Treasury of debt for purposes of collection by centralized administrative offset are contained in 31 CFR part 285 and the FCCS. At their discretion, creditor agencies may notify the Secretary of the Treasury of debts that have been delinquent for 180 days or less, including debts the agency seeks to recover from the pay account of an employee via salary offset.

§ 550.1109 Requesting recovery from the paying agency.

When possible, salary offset through the centralized administrative offset procedures in § 550.1108 should be attempted before applying the procedures in this section.

* * * * *

8. A new section § 550.1110 is added to read as follows:

§ 550.1110 Debt collection centers.

A debt collection center may act in behalf of a creditor agency to collect claims via salary offset consistent with this section, subject to any limitations on its authority established by the creditor agency it represents or by the U.S. Department of the Treasury.

(a) A debt collection center may be authorized to enter into a written agreement with the indebted employee regarding the repayment schedule or, in the absence of such agreement, to establish the terms of the repayment schedule.

(b) A debt collection center may make certifications to the Secretary of the Treasury under § 550.1108 or to a paying agency under § 550.1109 based on the certifications it has received from the creditor agency or a hearing official.

(c) A debt collection center responsible for collecting a particular debt may not act in behalf of a creditor agency for the purpose of making determinations regarding the existence or amount of that debt.

(d) A debt collection center responsible for collecting a particular debt may arrange for a hearing on the existence or amount of the debt or the repayment schedule by an administrative law judge or, alternatively, another hearing official not under the supervision or control of the head of the creditor agency or the debt collection center.

[FR Doc. 98–9972 Filed 4–15–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–87–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–200A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–200A series airplanes. This proposal would require a one-time inspection of the gust damper of the elevator control system to determine if the gust damper is properly charged, and of the horizontal stabilizer to detect cracking of elevator hinge rib 1; and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking

of elevator hinge rib 1 of the horizontal stabilizer, which could occur if the gust damper of the elevator control system discharges and allows the elevator to move freely in ground gust conditions. Such cracking could result in damage to the structural attachment of the elevator to the horizontal stabilizer, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–87–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–200A series airplanes. The elevator control system on this model incorporates a gust damper, which, when properly pressurized with hydraulic fluid, prevents free movement of the elevators in ground wind gusts. The CAA advises that two airplanes, which had been stored in the desert for an extended period of time, were each found to have a cracked or broken elevator hinge rib 1. Investigation revealed that the gust damper of the elevator control system on the airplanes was discharged, which may have been caused by deterioration of the gust damper seals due to the desert heat. The discharged gust damper of the elevator control system allowed the elevators on the airplanes to move freely in ground wind gusts, which resulted in high impact loads on the elevator hinge rib 1 stops, and consequent cracking of elevator hinge rib 1 on these airplanes. Such cracking, if not corrected, could result in damage to the structural attachment of the elevator to the horizontal stabilizer, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.55–16, dated July 14, 1997, which describes procedures for performing a one-time visual inspection of the gust damper of the elevator control system to determine whether the gust damper is properly charged, and recharging any gust damper that is found to be improperly charged. This service bulletin also describes procedures for performing a one-time detailed visual inspection of the horizontal stabilizer, using a borescope, to detect cracking of elevator hinge rib 1. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 010–07–97, dated March 2, 1998, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

Explanation of Requirements of Proposed 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, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed in the following paragraph.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer should be contacted for repair instructions if any cracking is found in elevator hinge rib 1, this proposal would require that discrepant parts be replaced with new or serviceable parts prior to further flight, in accordance with replacement instructions provided by the manufacturer and approved by the CAA.

Cost Impact

The FAA estimates that 19 British Aerospace Model BAe 146–200A series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,140, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Docket 98–NM–87–AD.

Applicability: Model BAe 146–200A series airplanes, as listed in British Aerospace Service Bulletin SB.55–16, dated July 14, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of elevator hinge rib 1 of the horizontal stabilizer, which could result in damage to the structural attachment of the elevator to the horizontal stabilizer and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with British Aerospace Service Bulletin SB.55–16, dated July 14, 1997.

(1) Perform a visual inspection of the gust damper of the elevator control system to determine if the gust damper is properly charged. If any gust damper is found to be improperly charged, prior to further flight, recharge the gust damper in accordance with the service bulletin.

(2) Perform a detailed visual inspection, using a borescope, to detect cracking of elevator hinge rib 1, on the left and right side of the airplane, in accordance with the service bulletin. If any cracking is found, prior to further flight, replace any cracked hinge rib 1 with a new or serviceable part, in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or procedures provided by the manufacturer that are approved by the Civil Aviation Authority, which is the airworthiness authority for the United Kingdom.

(b) 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 Maintenance 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.

(c) 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.

Note 3: The subject of this AD is addressed in British airworthiness directive 010–07–97, dated March 2, 1998.

Issued in Renton, Washington, on April 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10055 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–5998–4]

Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Initial call for information.

SUMMARY: The National Center for Environmental Assessment, of the U.S. Environmental Protection Agency (EPA), is undertaking to review and, as appropriate, revise the EPA criteria document entitled Air Quality Criteria for Particulate Matter (PM) as required under sections 108 and 109 of the Clean Air Act. The process that the EPA plans to follow is described in a previous notice (62 FR 55201, October 23, 1997).

Since completion of the 1996 criteria document for particulate matter, the EPA has continued to follow the scientific literature and compile information that may be relevant to the next periodic review of the National Ambient Air Quality Standards for PM (PM NAAQS). Interested parties are invited to assist the EPA in developing and refining its scientific information base to help ensure that all relevant information is considered in updating the PM criteria document. In particular, new information is being sought with regard to the following three general topic areas: (1) PM health effects, including experimental studies of PM exposure effects on humans or

laboratory animals (especially studies relating PM exposures at ambient or near-ambient levels to health effects, related biologic mechanisms, and PM dosimetry), and epidemiologic studies of short- and long-term PM exposure effects on human mortality and morbidity, as well as new information concerning related analytical methodology issues and human exposure; (2) PM welfare effects, e.g., effects on vegetation, agroecosystems (crops) and natural ecosystems, visibility, nonbiological materials, and the global climate; and (3) other pertinent air-quality-related information on atmospheric chemistry and physics, sources and emissions, ambient concentrations and measurement methodology, and transformation and transport in the environment.

Primary emphasis will be placed by the EPA on consideration of peer-reviewed, published information in revising the subject PM criteria document. Thus, most typically, submitted information should have been peer-reviewed and published or accepted for publication.

DATES: This is an initial call for information. To ensure consideration of relevant information in preparation of the first external review draft of a revised criteria document for PM, all communications and information should be submitted by June 30, 1998. However, ongoing research activities are expected to produce a substantial amount of additional new information that will not be available until after this date. The EPA will consider for inclusion in subsequent drafts of the document additional relevant information received by the time of the final Clean Air Scientific Advisory Committee (CASAC) review of subsequent draft(s) of the document. The final CASAC review is now expected to occur at a public meeting in May or June, 2000 according to the recently announced current schedule (65 FR 55201, October 23, 1997).

ADDRESSES: Communications should be addressed to the Project Manager for PM, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Diane H. Ray, National Center for Environmental Assessment-RTP Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–3637; facsimile: 919–541–1818; E-mail: ray.diane@epamail.epa.gov.

Dated: April 10, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–10147 Filed 4–15–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No. OST–96–1430; Notice 98–17]

RIN 2105–AC69

Public Availability of Information; Electronic FOIA Amendment

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation proposes to revise its regulations implementing the Freedom of Information Act (FOIA). This proposed revision provides changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996 (EFOIA), provides changes to DOT's fee schedule, and reflects certain organizational changes.

DATES: Comments must be received on or before June 15, 1998.

ADDRESSES: Comments should be addressed to Information Services, Attention: Docket Section, Room PL–401, Docket No. OST–96–1430, Department of Transportation, SVC–124.1, Washington, DC 20590. Any person wishing acknowledgement that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL–401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 10:00 a.m. to 5:00 p.m. ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170; electronic mail bob.ross@ost.dot.gov.

SUPPLEMENTARY INFORMATION: These proposed revisions reflect changes required by the Electronic Freedom of Information Act Amendments of 1996 (Public law 104–231). New provisions implementing the amendments are found at §§ 7.5 (frequently requested documents), 7.8 (electronic reading room requirements), 7.21 (deletion markings and volume estimation), 7.31 (timing of responses, multi-track and expedited processing), and 7.33 (unusual circumstances). Proposed revisions to DOT's fee schedule can be found at § 7.43. DOT proposes to charge fees at rates based on an average of hourly rates for three pay scale levels. Finally, references to DOT's Urban Mass Transportation Administration (UMTA) are changed to the Federal Transit Administration (FTA) to reflect a statutory revision of the name of the agency.

Regulatory Notices and Analysis

This proposed amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 1034 (1979), in part because it does not involve any change in important DOT policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Under the Regulatory Flexibility Act, the group of persons who will be directly affected by this proposal are the public, who will find it easier to obtain information from the DOT under FOIA. They do not qualify as small entities, but will have burdens lessened by this proposal, as the effect of the proposal will be to make records available through electronic media and to streamline FOIA processing activities; however, it is not likely that any such burden reduction will be large nor that it will be convertible into economic equivalents. Hence, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act, as amended.

List of Subjects in 49 CFR Part 7

Freedom of information.

In accordance with the above, DOT proposes to revise 49 CFR part 7 to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Subpart B—Information Required To Be Made Public by DOT

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

Subpart D—Procedures for Appealing Decisions Not To Disclose Records and/or Waive Fees

Subpart E—Time Limits

Subpart F—Fees

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements 5 U.S.C. 552, and prescribes rules governing the availability to the public of DOT records. Many documents are made available to the public for inspection and copying through DOT's Primary Electronic Access Facility and public record unit locations that are discussed in subpart B of this part, which contains the DOT regulations concerning the availability to the public of opinions issued in the adjudication of cases, policy issuances, administrative manuals, and other information made available to the public, without need for a specific request.

(b) Subpart C of this part describes the records that are not required to be disclosed on DOT's own action under this part, but that may be available upon request under FOIA.

(c) Indices are maintained to reflect all records subject to subpart B of this part, and are available for public inspection and copying as provided in subpart B.

§ 7.2 Definitions.

As used in this part—

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

Administrator means the head of each operating administration of DOT and includes the Commandant of the Coast Guard, the Inspector General, and the Director of the Bureau of Transportation Statistics.

Concurrence means that the approval of the person being consulted is required in order for the subject action to be taken.

Consultation means that the approval of the person being consulted is *not* required in order for the subject action to be taken.

Department or *DOT* means the Department of Transportation, including the Office of the Secretary of Transportation, the Office of the Inspector General, and the following operating administrations, all of which may be referred to as DOT components:

(Means of contacting each of these DOT components appear in § 7.15. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations (49 CFR part 1001.)

(1) United States Coast Guard,
(2) Federal Aviation Administration,
(3) Federal Highway Administration,
(4) Federal Railroad Administration,
(5) National Highway Traffic Safety Administration,
(6) Federal Transit Administration,
(7) Saint Lawrence Seaway Development Corporation,
(8) Maritime Administration,
(9) Research and Special Programs Administration, and
(10) Bureau of Transportation Statistics.

Primary Electronic Access Facility means the electronic docket facility in the DOT Headquarters Building, 400 7th Street, SW., Washington, DC 20590.

Reading room records are those records required to be made available to the public under 5 U.S.C. 552(a)(2) as described in § 7.5 of subpart B. These records are made available through DOT's Primary Electronic Access Facility. Other records may also be made available at DOT's discretion at DOT inspection facilities, including DOT's Primary Electronic Access Facility.

Record includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved. The term also includes any such documentary material stored by computer.

Responsible DOT official means the head of the operating administration concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them, authorized to take an action under this part.

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

Subpart B—Information Required To Be Made Public by DOT

§ 7.3 Publication in the Federal Register

This section implements 5 U.S.C. 552(a)(1), and prescribes rules governing publication in the **Federal Register** of the following:

(A) Descriptions of DOT's organization, including its operating administrations and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

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

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

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

(e) Each amendment, revision, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.4 Publication required.

(a) *General.* The material described in § 7.3 will be published in the **Federal Register.** For the purposes of this paragraph, material that will reasonably be available to the class of persons affected by it will be considered to be published in the **Federal Register** if it has been incorporated by reference with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that he/she has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, any procedure or matter required to be published in the **Federal Register**, but not so published.

§ 7.5 Availability of opinions, orders, staff manuals, statements of policy, and interpretations and indices.

(a) This section implements 5 U.S.C. 552(a)(2). It prescribes the rules governing the availability for public inspection and copying of the following reading room materials:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under DOT authority, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However, this does not include staff manuals or instruction to staff concerning internal operating rules, practices, guidelines, and procedures for DOT inspectors, investigators, law enforcement officers, examiners, auditors, and negotiators and other information developed predominantly for internal use, the release of which could significantly risk circumvention of agency regulations or statutes.

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this part and which, because of the nature of their subject matter, a DOT component determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in this paragraph.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.7, may not be cited, relied on, or used as precedent by DOT to affect any member of the public adversely unless the person to whose detriment it is relied on, used, or cited has had actual timely notice of the material.

(c) This section does not apply to material that is published in the **Federal Register** or covered by subpart C of this part.

§ 7.6 Deletion of identifying detail.

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details will be deleted from any record covered by this subpart that is published or made available for inspection. Whenever it is determined to be necessary to prevent the disclosure of information required or authorized to be withheld by another Federal statute, such information shall be deleted from any record covered by this subpart that is published or made available for inspection. A full explanation of the justification for the deletion will accompany the record published or made available for inspection.

§ 7.7 Access to materials and indices.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.5 will be made available for inspection and copying to any member of the public at DOT document inspection facilities. It has been determined that it is unnecessary and impracticable to publish the index of materials in the **Federal Register.** Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating administration of which it is a part.

(b) The material listed in § 7.5 that is published and offered for sale will be indexed, but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at the appropriate DOT reading room.

(c) Each DOT component will also make the reading room records identified in § 7.5(a) that are created by DOT on or after November 1, 1996, available electronically. This includes indices of its reading room records as required by law after December 1, 1999.

§ 7.8 Copies.

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the Docket Offices listed in § 7.10. Copies will be certified upon request and payment of the fee prescribed in § 7.43(f).

§ 7.9 Protection of records.

(a) Records made available for inspection and copying may not be removed, altered, destroyed, or mutilated.

(b) 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of government records.

(c) 18 U.S.C. 2071 provides for criminal penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate, or destroy, government records.

§ 7.10 Public records.

Publicly available records are located in DOT'S Primary Electronic Access Facility at 400 7th Street, SW., Washington, DC 20590.

(a) The Primary Electronic Access Facility maintains materials for the Office of the Secretary, including former Civil Aeronautics Board material, and materials for the operating administrations. This facility is located at Plaza Level 401, and the hours of operation are 10 a.m. to 5 p.m.

(b) Certain operating administrations also maintain public record units at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. These facilities are open to the public Monday through Friday except Federal holidays, during regular working hours. The Saint Lawrence Seaway Development Corporation has facilities at 180 Andrews Street, Massena, New York 13662–0520.

(c) Operating Administrations may have separate facilities for manual records. Additional information on the location and hours of operations for Docket Offices and inspection facilities can be obtained through DOT's Primary Electronic Access Facility, at (202) 366–9322.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

§ 7.11 Applicability.

(a) This subpart implements 5 U.S.C. 552(a)(3), and prescribes the regulations governing public inspection and copying of reasonably described records under FOIA.

(b) This subpart does not apply to:

(1) Records published in the **Federal Register**, opinions in the adjudication of cases, statements of policy and interpretations, and administrative staff manuals that have been published or made available under subpart B of this part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.13(c)(7) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of DOT under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 7.12 Administration of part.

Authority to administer this part and to issue determinations with respect to initial requests is delegated as follows:

(a) To the General Counsel for the records of the Office of the Secretary other than the Office of Inspector General.

(b) To the Inspector General for records of the Office of Inspector General.

(c) To the Administrator of each operating administration, who may redelegate to officers of that administration the authority to administer this part in connection with defined groups of records. However, each Administrator may redelegate the duties under subpart D of this part to consider appeals of initial denials of requests for records only to his or her deputy or to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that operating administration.

§ 7.13 Records available.

(a) *Policy.* It is DOT policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of FOIA. This includes providing reasonably segregable information from documents that contain information that may be withheld.

(b) *Statutory disclosure requirement.* FOIA requires that DOT, on a request from a member of the public submitted in accordance with this subpart, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from mandatory disclosure by statute (other than the Privacy Act or the Government in the Sunshine Act), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave not any discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, Tribal, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Deleted information.* The amount of information deleted from frequently-requested electronic records that are available in a public reading room will be indicated on the released portion of the record, unless doing so would harm an interest protected by the exemption concerned. If technically feasible, the amount of information deleted will be indicated at the place in the record where the deletion is made.

§ 7.14 Requests for records.

(a) Each person desiring access to or a copy of a record covered by this subpart shall comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request should indicate that it is being made under FOIA.

(3) The envelope in which a mailed request is sent should be prominently marked: "FOIA."

(4) The request should be addressed to the appropriate office as set forth in § 7.15.

(5) The request should state the format (*e.g.*, paper, microfiche, computer diskette, etc.) in which the information is sought, if the requestor has a preference.

(b) If the requirements of paragraph (a) of this section are not met, treatment of the request will be at the discretion of the agency. The twenty-day limit for responding to requests, described in § 7.31, will not start to run until the request has been identified, or would have been identified with the exercise of due diligence, by an employee of DOT as a request pursuant to FOIA and has been received by the office to which it should have been originally sent.

(c) *Form of Requests.* (1) Each request should describe the particular record to the fullest extent possible. The request should describe the subject matter of the record, and, if known, indicate the date when it was made, the place where it was made, and the person or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office will notify the requestor and, to the extent possible, indicate the additional data required.

(2) Each request shall—

(i) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requestor claims the request to fall and the basis of this claim (see subpart F of this part for fees and fee waiver requirements),

(ii) State the maximum amount of fees that the requestor is willing to pay or include a request for a fee waiver, and

(iii) A request seeking a fee waiver shall, to the extent possible, address why the requestor believes that the criteria for fee waivers set out in § 7.44(f) are met.

(3) Requesters are advised that the time for responding to requests set forth in subpart E of this part will not begin to run—

(i) If a requestor has not sufficiently identified the fee category applicable to the request,

(ii) If a requestor has not stated a willingness to pay fees as high as anticipated by DOT,

(iii) If a fee waiver request is denied and the requestor has not included an alternative statement of willingness to pay fees as high as anticipated by DOT, or

(iv) If a fee waiver request does not address fee waiver criteria.

(d) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons. In those instances where DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, DOT may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

Records will be provided in the form or format sought by the requestor if the record is readily reproducible in the requested format.

(e) *Search for records.* (1) Each record made available under this subpart will be made available for inspection and copying during regular business hours at the place where it is located, or photocopying may be arranged with the copied materials being mailed to the requestor upon payment of the appropriate fee. Original records ordinarily will be copied except in the instances where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. In these instances, copying of the original would not be in the public interest. In any event, original records will not be released from DOT custody. Original records, regardless of format, may be returned to agency service upon provision of a copy of the record to the requestor, or, in the case of a denial, upon creation and retention of a copy of the original for purposes of FOIA processing.

(2) DOT will make a reasonable effort to search for requested records in electronic form or format, unless doing so would significantly interfere with operation of the affected automated information system.

(f) If a requested record is known not to exist in the files of the agency, or to have been destroyed or otherwise disposed of, the requestor will be so notified.

(g) Fees will be determined in accordance with subpart F of this part.

(h) Notwithstanding paragraphs (a) through (g) of this section, informational material, such as news releases, pamphlets, and other materials of that nature that are ordinarily made available to the public as a part of any information program of the Government will be available upon oral or written request. A fee will not be charged for individual copies of that material so long as the material is in supply. In addition DOT will continue to respond, without charge, to routine oral or written inquires that do not involve the furnishing of records.

§ 7.15 Contacts for records requested under the FOIA.

Each person desiring a record under this subpart should submit a request in writing (via paper, facsimile, or electronic mail) to the DOT component where the records are located:

(a) FOIA Offices at 400 7th Street, SW., Washington, DC 20590:

(1) Office of the Secretary of Transportation, Room 5432.

(2) Federal Highway Administration, Room 4428.

(3) National Highway Traffic Safety Administration, Room 5221.

(4) Federal Transit Administration Room 9400.

(5) Maritime Administration, Room 7221.

(6) Research and Special Programs Administration, Room 8419.

(7) Bureau of Transportation Statistics, Room 3430.

(8) Office Inspector General, Room 9210.

(b) Federal Aviation Administration, 800 Independence Avenue, SW., Room 906A, Washington, DC 20591.

(c) United States Coast Guard, 2100 2nd Street, SW., Room 6106, Washington, DC 20593–0001.

(d) Director, Office of Finance, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, New York 13662–0520.

(e) Federal Railroad Administration, 1120 Vermont Avenue NW., 7th Floor, Washington, DC. (Mailing address: 400 Seventh St., SW., Washington, DC 20590.)

(f) Certain operating administrations also maintain FOIA contacts at regional offices and at the offices of the Commandant and District Commanders of the United States Coast Guard. Additional information on the location of these offices can be obtained through the FOIA contact offices listed above.

(g) If the person making the request does not know where in DOT the record is located, he or she may make inquiry to the Chief, FOIA Division, Office of the General Counsel (voice: 202.366.4542; facsimile: 202.366.8536).

(h) Requests for records under this part, and Freedom of Information Act inquiries generally, may be made by accessing the DOT Home Page on the Internet (www.dot.gov) and clicking on the Freedom of Information Act link.

§ 7.16 Requests for records of concern to more than one government organization.

(a) If the release of a record covered by this subpart would be of concern to both DOT and another Federal agency, the determination as to release will be made by DOT only after consultation with the other interested agency.

(b) If the release of the record covered by this subpart would be of concern to both DOT and a State, local, or Tribal government, a territory or possession of the United States, or a foreign government, the determination as to release will be made by DOT only after consultation with the interested government.

(c) Alternatively, DOT may refer the request (or relevant portion thereof) for decision by a Federal agency that originated or is substantially concerned with the records, but only if that agency is subject to FOIA. Such referrals will be made expeditiously and the requester notified in writing that a referral has been made.

§ 7.17 Consultation with submitters of commercial and financial information.

(a) If a request if received for information that has been designated by the submitter as confidential commercial information, or which DOT has some other reason to believe may contain information of the type described in § 7.13(c)(4), the submitter of such information will, except as is provided in paragraphs (c) and (d) of this section, be notified expeditiously and asked to submit any written objections to release. At the same time, the requester will be notified that notice and an opportunity to comment are

being provided to the submitter. The submitter will, to the extent permitted by law, be afforded a reasonable period of time within which to provide a detailed statement of any such objections. The submitter's statement shall specify all grounds for withholding any of the information. The burden shall be on the submitter to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The responsible DOT component will, to the extent permitted by law, consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision is made to disclose such information over the objection of a submitter, the office responsible for the decision will forward to the submitter a written notice that will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not accepted;

(2) A description of the business information to be disclosed; and

(3) A specific disclosure date. Such notice of intent to disclose will, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. At the same time the submitter is notified, the requester will be notified of the decision to disclose information.

(c) The notice requirements of this section will not apply if:

(1) The office responsible for the decision determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section will not apply in the case of:

(1) Business information submitted to the National Highway Traffic Safety Administration and addressed in 49 CFR part 512.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 39 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.39).

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component will promptly notify the submitter.

Subpart D—Procedures for Appealing Decisions Not to Disclose Records and/or Waive Fees

§ 7.21 General.

(a) Each officer or employee of DOT who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, either because it is subject to an exemption or not in DOT's custody and control, will give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within DOT. The denial letter will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted whenever practicable.

(b) When a request for a waiver of fees pursuant to § 7.44 has been denied in whole or in part, the requestor may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by § 7.31 and any person who has been given a determination pursuant to paragraph (a) of this section that a record will not be disclosed may appeal to the responsible DOT official. Any person who has not received an initial determination on his or her request within the time limits established by § 7.31 can seek immediate judicial review, which may be sought without the need first to submit an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the records are located, or in the District of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purposes of judicial review unless:

(1) It was made by the responsible DOT official; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. (Appeals may be submitted via facsimile and conventional mail, but not via electronic mail.) Such letter should indicate that it is an appeal from a denial of a request made under FOIA. The envelope in which a mailed appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in § 7.32 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by a DOT employee as an appeal under FOIA, and has been received by the appropriate office.

(e) Whenever the responsible DOT official determines it necessary, he/she may require the requestor to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances; in any case in which a request or order is made, DOT's time for responding ceases to count while the requestor response to the request or order. The decision of the responsible DOT official as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the responsible DOT official not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(g) Any final determination by the head of an operating administration not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by a representative of the General Counsel.

(h) Upon a determination that an appeal will be denied, the requestor will be informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

Subpart E—Time Limits

§ 7.31 Initial determinations.

An initial determination whether to release a record requested pursuant to subpart C of this part will be made within twenty Federal working days after the request is received by the appropriate office in accordance with § 7.14, except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination. If the determination is to grant this request, the desired record will be made available as promptly as possible. If the determination is to deny the request, the person making the request will be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination, the right of such person to appeal the determination, and the name and title of each person responsible for the initial determination to deny the request.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or on the number of pages involved.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requestor either by telephone, letter, facsimile, or electronic mail, whichever is not efficient in each case.

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) Requests made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests must be submitted to the component that maintains the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requestor within the category in paragraph (c)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requestor of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 7.32 Final determination.

A determination with respect to any appeal made pursuant to § 7.21 will be made within twenty Federal working days after receipt of such appeal except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination pursuant to § 7.21.

§ 7.33 Extension.

(a) In unusual circumstances as specified in this section, the time limits prescribed in § 7.31 and § 7.32 may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice may not specify a date that would result in a cumulative extension of more than 10 Federal working days without providing the requestor an opportunity to modify the request as noted below. Where the extension is for more than 10 working days, the DOT component will provide the requestor with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with any other agency or DOT component having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(b) Where a component reasonably believes that multiple requests submitted by a requestor, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated for the purposes of fees and processing activities. Multiple requests involving unrelated matters will not be aggregated.

Subpart F—Fees

§ 7.41 General.

(a) This subpart prescribes fees for services performed for the public under subparts B and C of this part by DOT.

(b) All terms defined by FOIA apply to this subpart, and the term "hourly rate" means the actual hourly base pay for a civilian employee or, for members of the Coast Guard, the equivalent hourly pay rate computed using a 40-hour week and the member's normal basic pay and allowances.

(c) This subpart applies to all employees of DOT, including those of non-appropriated fund activities of the Coast Guard and the Maritime Administration.

(d) This subpart does not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by DOT in payment of the cost of such work are deposited in a separate

account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

(e) This subpart does not apply to requests from record subjects for records about themselves in DOT systems of records, which are determined in accordance with the Privacy Act, as implemented by DOT regulations (49 CFR part 10).

§ 7.42 Payment of fees.

(a) The fees prescribed in this subpart may be paid by check, draft, or money order, payable to the DOT component where fees were incurred, for deposit in the General Fund of the Treasury of the United States, *e.g.* DOT/FAA.

(b) Charges may be assessed by DOT for time spent searching for requested records even if the search fails to locate records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, DOT may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When it is estimated that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requestor will likely exceed US $25, the requestor will be notified of the estimated amount of the fees, unless the requestor has indicated in advance his or her willingness to pay fees as high as those anticipated. In cases where a requestor has been notified that actual or estimated fees may amount to more than US $25, the request will be deemed not to have been received until the requestor has agreed to pay the anticipated total fee. The notice will also inform the requestor how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(d) Payment of fees may be required prior to actual duplication or delivery of any releasable records to a requestor. However, advance payment, *i.e.*, before work is commenced or continued on a request, may not be required unless:

(1) Allowable charges that a requestor may be required to pay are likely to exceed US $250; or

(2) The requestor has failed to pay within 30 days of the billing date fees charged for a previous request to any part of DOT.

(e) When paragraph (d)(1) of this section applies, the requestor will be notified of the likely cost and, where he/she has a history of prompt payment of FOIA fees, requested to furnish satisfactory assurance of full payment of FOIA fees. Where the requestor does not have any history of payment, he or she may be required to make advance payment of any amount up to the full estimated charges.

(f) When paragraph (d)(2) of this section applies, the requestor will be required to demonstrate that the fee has, in fact, been paid or to pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed below. The requestor will also be required to make an advance payment of the full amount of the estimated fee before processing of a new request or continuation of a pending request is begun.

(g) DOT will assess interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requestor. Interest will accrue from the date of the notice of amount due and will be at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing will stay the accrual of interest, even if the payment has not been processed.

(h) If payment of fees charged is not received within 30 calendar days after the date the initial notice of the amount due is first mailed to the requestor, an administrative charge will be assessed by DOT to cover the cost of processing and handling the delinquent claim. In addition, a penalty charge will be applied with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, will be used by DOT to encourage payment of amounts overdue.

(i) Notwithstanding any other provision of this subpart, when the total amount of fees that could be charged for a particular request (or aggregation of requests) under subpart C of this part, after taking into account all services that must be provided free of, or at a reduced, charge, is less than US $10.00 DOT will not make any charge for fees.

§ 7.43 Fee schedule.

The rates for manual searching, computer operator/programmer time and time spent reviewing records will be calculated based on the grades and rates established by the Washington-Baltimore Federal White-Collar Pay Schedule or equivalent grades, as follows:

When performed by employees:

GS–1 through GS–8—Hourly rate of GS–5 step 7 plus 16%

GS–9 through GS–14—Hourly rate of GS–12 step 7 plus 16%

GS–15 and above—Hourly rate of GS–15 step 7 plus 16%

(a) The standard fee for a manual search to locate a record requested under subpart C of this part, including making it available for inspection, will be determined by multiplying the searcher's rate as calculated from the above chart and the time spent conducting the search.

(b) The standard fee for a computer search for a record requested under subpart C of this part is the actual cost. This includes the cost of operating the central processing unit for the time directly attributable to searching for records responsive to a FOIA request and the operator/programmer's rate as calculated from the above chart for costs apportionable to the search.

(c) The standard fee for review of records requested under subpart C of this part is the reviewer's rate as calculated above multiplied by the time he/she spent determining whether the requested records are exempt mandatory disclosure.

(d) The standard fee for duplication of a record requested under subpart C of this part is determined as follows:

(1) Per copy of each page (not larger than 8.5×14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment)—US $0.10.

(2) Per copy prepared by computer such as tapes or printout—actual costs, including operator time.

(3) Per copy prepared by any other method of duplication—actual direct cost of production.

(e) Depending upon the category of requestor, and the use for which the records are requested, in some cases the fees computed in accordance with the above standard fee schedule will either be reduced or not charged, as prescribed by other provisions of this subpart.

(f) The following special services not required by FOIA may be made available upon request, at the stated fees: Certified copies of documents, with DOT or operating administration seal (where authorized)—US $4.00; or true copy, without seal—US $2.00.

§ 7.44 Services performed without charge or at a reduced charge.

(a) A fee is not to be charged to any requestor making a request under subpart C of this part for the first two hours of search time unless the records are requested for commercial use. For purposes of this subpart, when a computer search is required two hours of search time will be considered spent when the hourly costs of operating the

central processing unit used to perform the search added to the computer operator's salary cost (hourly rate plus 16 percent) equals two hours of the computer operator's salary costs (hourly rate plus 16 percent).

(b) A fee is not to be charged for any time spent searching for a record requested under subpart C of this part if the records are not for commercial use and the requestor is a representative of the news media, an educational institution whose purpose is scholarly research, or a non-commercial scientific institution whose purpose is scientific research.

(c) A fee is not to be charged for duplication of the first 100 pages (standard paper, not larger than 8.5×14 inches) of records provided to any requestor in response to a request under subpart C of this part unless the records are requested for commercial use.

(d) A fee is not to be charged to any requestor under subpart C of this part to determine whether a record is exempt from mandatory disclosure unless the record is requested for commercial use. A review charge may not be charged except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. A review charge may not be assessed for review at the administrative appeal level. When records or portions of records withheld in full under an exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(e) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(f) Factors to be considered by DOT officials authorized to determine whether a waiver or reduction of fees will be granted include:

(1) Whether the subject matter of the requested records concerns the operations or activities of the Federal government;

(2) Whether the disclosure is likely to contribute to an understanding of Federal government operations or activities;

(3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;

(4) Whether the contribution to public understanding of Federal government operations or activities will be significant;

(5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

(g) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee or a member of the Coast Guard.

(h) Documents will be furnished without charge or at a reduced charge if the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial or court-martial at which the requestor testified.

§ 7.45 Transcripts.

Transcripts of hearings or oral arguments are available for inspection. Where transcripts are prepared by a nongovernmental contractor, and the contract permits DOT to handle the reproduction of further copies, § 7.43 applies. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

§ 7.46 Alternative sources of information.

In the interest of making documents of general interest publicly available at as low a cost as possible, alternative sources will be arranged whenever possible. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, Virginia 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

Issued in Washington, DC, on March 26, 1998.

Rodney E. Slater,

Secretary of Transportation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 679

[Docket No. 980402084–8084–01; I.D. 032398B]

RIN 0648–AJ51

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery off Alaska; Amendment 3

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 3 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which would delegate to the State of Alaska (State) the authority to manage all aspects of the scallop fishery, except limited access. This proposed rule would repeal all Federal regulations governing the scallop fishery off Alaska, except for the scallop vessel moratorium program. This action is necessary to eliminate duplicate regulations and management programs at the State and Federal levels if Amendment 3 is approved and is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received by June 1, 1998.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 3 are available from NMFS at the same address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska is managed by NMFS and the State under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska

Administrative Code (AAC) at 5 AAC Chapter 38—Miscellaneous Shellfish.

The Council has submitted Amendment 3 for Secretarial review, and a Notice of Availability of the amendment was published March 31, 1998 (63 FR 15376) with comments on the FMP amendment invited through June 1, 1998. Comments may address the FMP amendment, the proposed rule, or both, but must be received by June 1, 1998, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by June 1, 1998, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

Management Background and Need for Action

Historic Management of the Scallop Fishery

The scallop resource off Alaska has been commercially exploited for over 30 years. Weathervane scallop stocks off Alaska were first commercially explored by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lb (907.2 metric tons (mt)) of shucked meat. Since then, vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960's. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lb (544.3 mt) landed were harvested in State waters, with the remainder harvested in Federal waters. Prior to 1990, about two-thirds of the scallop harvest was taken off Kodiak Island and about one-third from the Yakutat area, with other areas making minor contributions to overall landings. The increased harvests in the 1990's occurred with new exploitation in the Bering Sea. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

Alaska scallop vessels average 90 to 110 ft (27.4 m–33.5 m) long and harvest scallops using dredges of standard design. Weathervane scallops are processed at sea by manual shucking, with only the meats (adductor muscles) retained. Scallops harvested in Cook Inlet are bagged and iced, whereas scallops harvested from other areas of Alaska are generally block frozen at sea.

Between 1968 and 1995, the State, through the Alaska Department of Fish and Game (ADF&G), managed the scallop fishery in State and Federal waters off Alaska. Under the Magnuson-Stevens Act, the State may regulate any fishing vessel outside State waters if the vessel is registered under the laws of the State. Prior to 1995, all vessels participating in the Alaska scallop fishery were registered under the laws of the State. In the 1980s, the Council concluded that the State's scallop management program provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by Federal regulation.

Initial Federal Involvement in the Fishery

By 1992, fishery participants and management agencies developed growing concerns about overcapitalization and overexploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops were fully exploited and any increase in effort could be detrimental to the stocks. Information indicated that dramatic changes in age composition had occurred after the fishing-up period (1980–90), with commensurate declines in harvest. In the early 1990s, many fishermen abandoned historical fishing areas and searched for new areas to maintain catch levels. Increased numbers of small scallops were reported. These events raised concerns because scallops are highly susceptible to overfishing and boom/bust cycles worldwide.

The need to limit access was the primary motivation for the Council to begin consideration of Federal management of the scallop fishery in 1992. The Council believed that Federal action was necessary because existing State statutes precluded a State vessel moratorium and, at that time, the State did not have authority under the Magnuson-Stevens Act to limit access in Federal waters. The Council began analysis of a variety of options for Federal management of the scallop fishery in Federal waters off Alaska, and a vessel moratorium was proposed as an essential element of a Federal management regime to stabilize the size and capitalization of the scallop fleet while the Council considered permanent limited entry alternatives for the fishery. In September 1993, the Council tentatively identified its preferred alternative of a Federal FMP for the scallop fishery— a Federal vessel moratorium and shared management authority with the State. A draft FMP and analysis were released to the public in November 1993.

In April 1994, the Council and its advisory bodies reviewed the draft FMP, received public testimony, and approved the draft FMP for the scallop fishery, which would establish a vessel moratorium and defer most other routine management measures to the State. Under the draft FMP, non-limited access measures were deferred to the State based on the premise that all vessels fishing for scallops in the Federal waters off Alaska would also be registered with the State. The Council recognized the potential problem of unregistered vessels fishing in Federal waters, but noted that all vessels fishing for scallops in Federal waters were registered in Alaska and that no information was available to indicate that vessels would not continue to register with the State.

Unregulated Fishing and the Closure of Federal Waters

During the time NMFS was developing regulations to implement the Council's proposed FMP, a vessel that had canceled its State registration began fishing for scallops in Federal waters in the Prince William Sound Registration Area. These waters had been previously closed by the ADF&G to fishing by State-registered vessels because the guideline harvest level of 50,000 lb (22.7 mt) of shucked meats had already been taken. Because the vessel was outside State jurisdiction, the ADF&G was unable to stop this uncontrolled fishing activity. The U.S. Coast Guard boarded the vessel in question and was informed that 54,000 lb (24.5 mt) of shucked scallop meat were on board. This amount, combined with the 50,000 lb (22.7 mt) of shucked meats that had already been taken by State-registered vessels meant that the State's guideline harvest level for the Prince William Sound Registration Area was exceeded by over 100 percent. On February 17, 1995, the Council held an emergency teleconference to address concerns about uncontrolled fishing for scallops in Federal waters by vessels fishing outside the jurisdiction of State regulations and requested that NMFS implement an emergency rule to close Federal waters to fishing for scallops to prevent overfishing of the scallop stocks. NMFS approved the Council's request and closed Federal waters off Alaska to fishing for scallops by emergency rule on February 23, 1995 (60 FR 11054, March 1, 1995).

After the unregulated fishing event that warranted the emergency interim rule, the Council and NMFS determined that the Council's draft FMP was no longer an appropriate option for the

management of the scallop fishery in Federal waters. As a result, the draft FMP was not submitted for review by the Secretary of Commerce. To respond to the need for Federal management of the scallop fishery once the emergency rule expired, the Council prepared a second FMP for the scallop fishery, which was subsequently approved by NMFS on July 26, 1995. The only management measure authorized and implemented under the FMP was an interim closure of Federal waters off Alaska to fishing for scallops for 1 year (60 FR 42070, August 15, 1995). The purpose of the interim closure was to prevent uncontrolled fishing for scallops in Federal waters while a Federal scallop management program was developed. The Council recommended this approach because it determined that the suite of alternative management measures necessary to support a controlled fishery for scallops in Federal waters could not be prepared, reviewed, and implemented before the emergency rule expired.

Amendment 1: State-Federal Management Regime

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. Amendment 1 was approved by NMFS on July 10, 1996. Federal waters were re-opened to fishing for scallops on August 1, 1996. Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicate most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, inseason adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State.

Amendment 2: Vessel Moratorium

On March 5, 1997, NMFS approved Amendment 2 to the FMP, which established a moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. A final rule implementing the vessel moratorium was published on April 11, 1997 (62 FR 17749). The moratorium runs from July 1, 1997, through June 30, 2000, or until repealed or replaced by a permanent limited access program. Eighteen vessels qualify for moratorium permits under the Federal vessel moratorium.

Problems with the Current Management Regime

While the joint State-Federal management regime established under Amendment 1 has enabled NMFS to reopen the EEZ to fishing for scallops, it has proven to be cumbersome in practice. Every management action, including inseason openings and closures, must be coordinated so that State and Federal actions are simultaneously effective. NMFS must draft and publish in the **Federal Register** inseason actions that duplicate every State inseason scallop action. State scallop managers are now constrained in their ability to implement rapidly management decisions because they must coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the **Federal Register**.

The only purpose of maintaining duplicate regulations at the State and Federal level is to prevent unregulated fishing by vessels not registered under the laws of the State. The State-Federal management regime established under Amendment 1 is no longer necessary to prevent unregulated fishing for scallops in Federal waters because the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Act, now provides authority for the Council to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska.

Regulatory Changes Proposed Under Amendment 3

In December 1997, the Council adopted Amendment 3 to the FMP by a 10 to 1 vote. Amendment 3 would delegate to the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. Section 306(a)(3)(B) of the Magnuson-Stevens Act, as amended, requires that such a delegation of authority be made through an FMP amendment and be approved by a three-quarters majority vote of the Council.

The proposed rule to implement Amendment 3 would remove subpart F of 50 CFR part 679. Subpart F contains all the Federal regulations specific to the scallop fishery off Alaska, with the exception of the scallop vessel moratorium program, which is set out under permit requirements at 50 CFR 679:4(g). The Federal scallop vessel moratorium program established under Amendment 2 to the FMP would not be affected by the proposed rule. These changes would simplify scallop management in the Federal waters off Alaska by eliminating the unnecessary duplication of regulations at the State and Federal levels.

The proposed rule would also make minor changes to 50 CFR 679.1(h) to accommodate the delegation of management authority to the State and would add a definition of Scallop Registration Area H (Cook Inlet) to the definitions at 50 CFR 679.2 because this definition is necessary for the scallop vessel moratorium program.

Statutory Requirements for Delegation of Authority to a State

Section 306(a)(3) of the Magnuson-Stevens Act provides:

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary [of Commerce] determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996[,] that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery

management plan under this Act is approved and implemented for such fishery.

Paragraph (3)(B) applies to the scallop fishery off Alaska because the FMP was approved by the Secretary on July 26, 1995, with the closure of Federal waters to fishing for scallops as the sole management measure.

Classification

At this time, NMFS has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities. As a result of this analysis, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would not have a significant economic impact on a substantial number of small entities. A substantial number of small entities would be affected by implementation of this rule, namely all 18 scallop vessels eligible to fish in Federal waters under the Federal vessel moratorium. However, the proposed rule would not have a significant economic impact on these affected small entities. Compared to the status quo, the proposed action only eliminates duplicative Federal regulations. The fishery would continue to be governed under existing State scallop regulations. All vessels currently participating in the fishery are registered with the State and subject to these State regulations at present. Consequently, none of the participants in the fishery would face a meaningful regulatory change compared to the status quo. For this reason, the proposed action would not change annual gross revenues by more than 5 percent, total costs of production by more than 5 percent, compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities, and would not force any small entities out of business. In addition, participation in the fishery would continue to be governed by the existing Federal moratorium program. No new vessels would be allowed to enter the fishery and no existing vessels would be eliminated. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the scallop fisheries off Alaska.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 9, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, paragraph (h) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(h) *Fishery Management Plan for the Scallop Fishery off Alaska.* (1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

* * * * *

3. In § 679.2, a definition "Scallop Registration Area H Cook Inlet" is added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Scallop Registration Area H (Cook Inlet) means all Federal waters of the GOA west of the longitude of Cape Fairfield (148°50' W. long.) and north of the latitude of Cape Douglas (58°52' N. lat.).

* * * * *

4. In § 679.3, paragraph (g) is added to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(g) *Scallops.* Additional regulations governing conservation and management of scallops off Alaska are contained in Alaska Statutes A.S. 16 and Alaska Administrative Code at 5 AAC Chapter 38.

§§ 679.60–679.65 (subpart F) [Removed and Reserved]

5. Sections 679.60–679.65, subpart F, are removed and reserved.

[FR Doc. 98–10138 Filed 4–15–98; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 73
Thursday, April 16, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 10, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Information Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Poultry Improvement Plan.

OMB Control Number: 0579–0007.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is revising the regulations related to the National Poultry Improvement Plan (NPIP) to allow for the participation of ostrich breeding flocks. Allowing ostrich breeders and flock owners to voluntarily participate in this program would promote objectives aimed at preventing and controlling egg-transmitted, hatchery-disseminated poultry diseases. The information collection requirements would remain the same, however, the number of respondents would increase to reflect the potential participation of the ostrich breeders and flock owners.

Need and Use of the Information: Information is collected from various types of poultry breeders and flock owners to determine the number of eggs hatched and sold as well as to report outbreaks of disease. This information allows APHIS officials to track, control, and prevent many types of poultry diseases.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,001.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 7,449.

Food and Nutrition Service

Title: Evaluation of Cooperative Agreement Nutrition Education Networks.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food and Nutrition Service (FNS) under the authority of the Food Stamp Act awarded cooperative agreements to 22 states to set up networks to develop self-sustaining organizations that, in turn, would prepare plans to implement nutrition education for food stamp families on a statewide basis. FNS is now conducting a process evaluation of the networks to examine the procedures and tasks involved in implementing the networks. A one time collection of information from representative individuals involved in the networks through in-person and telephone interviews will be conducted to support this evaluation.

Need and use of the Information: The collection of information is designed to answer several questions: (1) How effective were the processes employed by cooperators in reaching the goals of the project? (2) What lessons can be learned about effective development of nutrition education networks? and, (3) What can FNS do to foster the development of statewide nutrition education networks? Upon completion of the information collection activity, the results of the survey will be used by FNS management to make decisions about ongoing improvements to procedures that support the state nutrition education activities directed at food stamp families, and to learn and disseminate lessons to state and local programs about innovative and effective methods to deliver nutrition education to food stamp families.

Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 139.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 138.

Animal and Plant Health Inspection Service

Title: Imported Fire Ant.

OMB Control Number: 0579–0102.

Summary of Collection: The Plant Protection and Quarantine Service (PPQ) of USDA's Animal and Plant Health Inspection Service (APHIS) has the responsibility of enforcing quarantines that are designed to prevent Imported Fire Ants from invading areas of the United States that are not yet infested. Information is collected through a variety of forms and certificates to ensure that nursery stock are free of infestation and to regulate movement of specific articles that might carry Imported Fire Ants from infested areas to non-infested areas.

Need and Use of the Information: APHIS requires a variety of forms and certifications be provided by nursery owners to ensure that plant stock is visually inspected for Imported Fire Ants and to document what treatments were performed if Imported Fire Ants were detected. Additionally, nursery owners must provide information on the movement of regulated items from quarantined areas. APHIS officials used

this information to ensure compliance with the Federal and State Imported . Fire Ant regulations. Without the collection of this information, APHIS would not be able to prevent Imported Fire Ants from moving beyond the quarantine zone.

Description of Respondents: Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,704.

Frequency of Responses: Recordkeeping; Reporting: Other (twice monthly).

Total Burden Hours: 3,278.

Farm Service Agency

Title: CCC Conservation Contract.

OMB Control Number: 0560–0174.

Summary of Collection: The Farm Service Agency (FSA), in conjunction with the Natural Resources Conservation Service (NRCS), is charged with administering the Environmental Quality Incentives Program (EQIP), the Farmland Protection Program (FPP), and the Conservation Farm Option (CFO) Program. These programs provide farmers and ranchers with flexible opportunities to work with the federal government to address natural resource concerns by implementing innovative and environmentally-sound solutions. Information must be collected from potential participants who wish to apply for these programs. Additional information is required from individuals once they have been accepted into the program to ensure compliance and to issue, as appropriate, cost share and land retirement payments.

Need and Use of the Information: Information will be collected from producers and ranchers who wish to voluntarily participate in either the EQIP, FPP, or CFO programs. The application information will allow agency management to select program participants which will help best achieve program objectives related to maximizing environmental benefits, minimizing land retirement, and continuing agricultural production levels. Ongoing recordkeeping and reporting requirements will be necessary to ensure compliance with program provisions.

Description of Respondents: Farms; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 91,000.

Frequency of Responses: Recordkeeping; Reporting: Other (When applying).

Total Burden Hours: 384,830.

Animal and Plant Health Inspection Service

Title: 9 CFR 85 Psuedorabies.

OMB Control Number: 0579–0070.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS), on behalf of the Secretary of Agriculture, is charged with taking actions deemed necessary to prevent the introduction or dissemination of any contagious infections or communicable disease of animals or poultry from one State or Territory of the United States to another. APHIS implements regulations that control and stop the escalating spread of pseudorabies, which is a herpes virus disease that affects many species of animal, but primarily swine. Regulating the interstate movement of swine requires the use of certain information gathering activities such as permits, certificates, and owner-shipper statements to ascertain the health status of the swine.

Need and Use of the Information: The information collected is used by APHIS to monitor the health status of swine being moved, the number of swine being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement. This information also provides APHIS officials with critical information concerning a shipment's history, which in turn enables the agency to engage in swift, successful trace back investigations when infected swine are discovered.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 30,050.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 5,092.

Animal and Plant Health Inspection Service

Title: Brucellosis Program Cooperative Agreements—Title 9, CFR Parts 50, 51, 53, 54, 71, 76, and 78.

OMB Control Number: 0579–0047.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS), on behalf of the Secretary of Agriculture, is charged with taking actions deemed necessary to prevent the introduction or dissemination of any contagious infections or communicable disease of animals or poultry from one State or Territory of the United States to another. APHIS implements regulations controlling interstate movement of affected animals in conjunction with the State-Federal Brucellosis Eradication Program. Brucellosis is a contagious disease affecting animals which is characterized by abortion and impaired fertility. APHIS is required to collect epidemiologic data from State authorities in an effort to locate and eradicate the Brucellosis disease.

Need and Use of the Information: The information collected is used by APHIS to search for infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected. The information is also used to determine brucellosis infected area status and aid herd owners by speeding up the detection and elimination of serious disease conditions in their herds.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 7,278.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 52,019.

Economic Research Service

Title: Characteristics of Participants in USDA's Single Family Direct Loan Housing Program.

OMB Control Number: 0536–NEW.

Summary of Collection: The U.S. Department of Agriculture's Economic Research Service (ERS) has the responsibility for providing social and economic intelligence on changing rural housing needs in the United States. Information is required to establish a detailed data base on the characteristics of USDA's Section 502 Direct Loan Program participants to help assess the impact of this housing-assistance program on rural residents and their communities.

Need and Use of the Information: The information will be collected by ERS through a written survey. The information collected in the survey will help to fill a serious gap in ERS' understanding of the nature of housing needs in rural areas and will provide USDA and other policy makers with sound information to help evaluate current programs and develop more effective rural housing policies.

Description of Respondents: Individuals or households.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 990.

Grain Inspection, Packers and Stockyards Administration

Title: Reporting and Recordkeeping Requirements.

OMB Control Number: 0580–0013.

Summary of Collection: The Grain Inspection Packers & Stockyards Administration (GIPSA) is mandated to

provide, upon request, inspection, certification, and identification services related to assessing the class, quality, quantity, and condition of agricultural products shipped or received in interstate and foreign commerce. Applicants requesting GIPSA services must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Need and Use of the Information: The information collected is used by GIPSA employees to guide them in the performance of their duties. Additionally, producers, elevator operators, and/or merchandisers who obtain official inspection, testing, and weighing services are required to keep records related to the grain or commodity for 3 years. Personnel who provide official inspection, testing, and weighing services are required to maintain records related to the lot of grain or related commodity for a period of 5 years. This information is used for the purpose of investigating suspected violations.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 3,200.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Semi-annually, Monthly; Annually.

Total Burden Hours: 468,024.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–10048 Filed 4–15–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection. This information collection is critical to reach minority and female farm producers, to ensure as many eligible voters as possible receive FSA county committee election ballots. This action is in response to the report issued by the Civil Rights Action Team.

DATE: Comments on this notice must be received by June 15, 1998 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Karl V. Choice, Assistant to the Director, USDA, FSA, OAS, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540; telephone (202) 720–8782; e-mail karlchoice@wdc.usda.gov.; or facsimile (202) 690–3354.

SUPPLEMENTARY INFORMATION:

Title: Request for a FSA County Committee Ballot and Declaration of Eligibility to Vote.

OMB Control Number: 0560–0181.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension of currently approved information collection.

Abstract: The Soil Conservation and Domestic Allotment Act of 1938, as amended, authorizes the establishment of FSA county committees by the Secretary of Agriculture. In February 1997, the USDA Civil Rights Action Team focused upon under-representation of minorities and females on county committees. This under-representation could mean that minority and female producers hear less about programs and lack specific information on available services. In an effort to increase representation by members of groups who are under-represented, an effort is begin made to obtain the names and addresses of unregistered, eligible voters. Once an eligible voter's name and address is obtained, he/she will become a registered voter and will be sent a ballot in order to vote in applicable county committee elections.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Individual minority and female owners, operators, share croppers, and tenants of farms.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: $4,160 (416 hours times $10 per hour).

Proposed topics comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and to Karl V. Choice, Assistant to the Director, USDA-FSA-OAS, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540; telephone (202) 720–8782; e-mail karlchoice@wdc.fsa.usda.gov. Copies of the information collection may be obtained from Karl Choice at the above address.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on April 9, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 98–10049 Filed 4–15–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on April 29 and 30, 1998 at the Mt. Shasta Resort Siskiyou Room, 1000 Siskiyou Lake Blvd., Mt. Shasta, California. On April 29, the meeting will begin at 9:00 a.m. and adjourn at 5:00 p.m. The meeting on April 30 will resume at 8:00 a.m. and adjourn at 2:00 p.m. Agenda items to be covered include: (1) DFO comments; (2) salvage recommendations; (3) subcommittee reports; (4) road management issues; (5) followup to the Joint 3PAC/SCERT meeting; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road,

Yreka, California 96097; telephone 530–841–4468.

Dated: April 9, 1998.

Jan Ford,

Acting Forest Supervisor.

[FR Doc. 98–10064 Filed 4–15–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, May 7, 1998, at the Hyatt Regency Hotel, 400 SE 2nd Avenue, Miami, Florida 33131. The purpose of the meeting is to discuss the immigration in Florida project and discuss the civil rights progress and/or problems in the State and Nation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 8, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–10128 Filed 4–15–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 03/26/98–04/10/98

Firm name	Address	Date petition accepted	Product
The Egg Lady, Inc.	P.O. Box 190, Johnson City, NY 13790.	04/07/98	Ornamental Ceramic Eggs, Plates, Teapots and Accessories.
Heise Industries, Inc.	196 Commerce Street, East Berlin, CT 06023.	03/03/98	Blow Molds for Manufacturing Blow Molded Containers of Rubber or Plastic.
General Vinyls, Inc. DBA Bray Company.	6921 Front Street, Barnhart, MO 63012.	03/27/98	Promotional Advertising Items, Document Wallets and Cadaver Bags.
Skokie Tool Corporation	7650 North Austin Avenue, Skokie, IL 60077.	03/27/98	Computer Chassis Parts and Automotive Stereo Speaker Screens.
Advanced Energy Sources, Inc	1031 S. Santa Fe Avenue, Compton, CA 90221.	03/30/98	Lead Acid Gel Storage Batteries.
Trailmate, Inc.	2359 Trailmate Drive, Sarasota, FL 34243.	03/30/98	Specialty Bicycles, Tricycles and Recumbents and Mowers and Edgers.
B & B Industries Supplies, L.L.C	P.O. Box 77757, Baton Rouge, LA 70820.	03/31/98	Wire Rope Slings, Tarpaulins, Industrial Belts, Fittings and Chains.
Seqel Software, Inc.	98 Everett Street, Durango, CO 81301.	04/02/98	Jackets, Pants, Hats, Shorts, Shirts and Belts.
Tempset, Inc.	4204 Miami Street, St. Louis, MO 63116.	04/02/98	Thermostats for Home Ovens.
Pease Industries, Inc.	7100 Dixie Highway, Fairfield, OH 45014.	04/02/98	Residential Entry Doors of Wood, Steel, and Fiberglas.
Emerald Packaging	33050 Western Avenue, Union City, CA 94587.	04/06/98	Packaging Bags and rolls of Printed Plastic Sheets.
Carolina Maid Products, Inc.	P.O. Box 308, Highway 52, Granite Quarry, NC 28072.	04/06/98	Women's Dresses.
Bianchi International	100 Calle Cortez, Temecula, CA 92590.	04/06/98	Backpacks, Satchels, Duffles, Gun Holsters and Accessories.
Terra Enterprises, Inc., dba The Earth Works.	15851 FM 624, Robstown, TX 78380.	04/07/98	Ceramic Tableware.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 9, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–10068 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

International Trade Administration

Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Policy Bulletin; request for comments.

SUMMARY: The Department of Commerce is proposing policies regarding the conduct of five-year ("sunset") reviews of antidumping and countervailing duty orders and suspended investigations pursuant to the provisions of sections 751(c) and 752 of the Tariff Act of 1930, as amended, and the Department's regulations. The proposed policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations.

DATES: To be assured of consideration, written comments must be received not later than May 12, 1998. Rebuttal comments must be received not later than June 2, 1998.

ADDRESSES: A signed original and six copies of each set of comments, including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; Attention: Sunset Policy Bulletin.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, or Stacy J. Ettinger, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–4618.

SUPPLEMENTARY INFORMATION: This policy bulletin proposes guidance regarding the conduct of sunset reviews. As described below, the proposed policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations. We invite public comment on the policies.

Request for Comment

The Department solicits comments pertaining to its proposed policies concerning sunset reviews. Initial comments should be received by the Assistant Secretary not later than May 12, 1998. Any rebuttals to the initial comments should be received by the Assistant Secretary not later than June 2, 1998. Commenters should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 am and 5:00 pm on business days.

Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. To facilitate their consideration by the Department, initial and rebuttal comments regarding these proposed policies should be submitted in the following format: (1) number each comment in accordance with the paragraph numbering of the proposed policy being addressed; (2) begin each comment on a separate page; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section "Summary of the Comment;" and (4) concisely state the issue identified and discussed in the comment and provide reasons for any recommendation.

To help simplify the processing and distribution of comments, the Department requests the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the paragraph numbering of the proposed policy being addressed in the comment.

Comments received on diskette will be made available to the public on the Internet at the following address: "http://www.ita.doc.gov/import_admin/records/". In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost), with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482–0866.

Dated: April 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Policy Bulletin 98:3

Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders

Sunset Review Policies

Sunset Review Policies

I. Overview

The Uruguay Round Agreements Act ("URAA") revised the Tariff Act of 1930, as amended ("the Act"), by requiring that antidumping ("AD") and countervailing duty ("CVD") orders be revoked, and suspended investigations be terminated, after five years unless revocation or termination would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Department of Commerce ("the Department") the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspended investigation, would be likely to lead to a continuation or recurrence of dumping or a countervailable subsidy. The Department then must transmit to the International Trade Commission ("the Commission") its likelihood determination and its determination regarding the magnitude of the margin of dumping or the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The URAA also requires that the Department begin initiating sunset reviews in July 1998, that all sunset reviews of "transition orders"—those antidumping and countervailing duty orders and suspended investigations in effect on January 1, 1995, the effective date of the URAA—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that the Department initiate a sunset review of each order or suspended investigation that is not a "transition order" not later than 30 days before the fifth anniversary of publication of the order or suspension agreement in the **Federal Register**. Pursuant to section 751(c)(1) of the Act, initiation of sunset reviews is automatic.

Sunset reviews of antidumping and countervailing duty orders and suspended investigations will be conducted pursuant to the provisions of the Act, including sections 751(c) and 752 of the Act, and the Department's regulations at 19 CFR Part 351, including §§ 351.218, 351,221, 351.222(i), 351.307, 351.308(f), 351.309, and 351.310 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (interim final rules)). These policies are intended to complement the applicable statutory and regulatory provisions by providing guidance on methodological or analytical issues not explicitly addressed by the statute and regulations. In developing these policies, the Department has drawn on the guidance provided by the legislative history accompanying the URAA, specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994).

II. Sunset Reviews in Antidumping Proceedings

A. Determination of Likelihood of Continuation or Recurrence of Dumping

1. In General

In accordance with section 752(c)(1) of the Act, in determining whether revocation of an antidumping order or termination of a suspended dumping investigation would be likely to lead to continuation or recurrence of dumping, the Department will consider—

(a) the weighted-average dumping margins determined in the investigation and subsequent reviews, and

(b) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order or acceptance of suspension agreement.

2. Basis for Likelihood Determination

Consistent with the SAA at 879, and the House Report at 56, the Department will make its determination of likelihood on an order-wide basis.

3. Likelihood of Continuation or Recurrence of Dumping

The SAA at 889, the House Report at 63, and the Senate Report at 52, state that,

> [D]eclining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.

In addition, the SAA at 890, and the House Report at 63–64, state that,

> [E]xistence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

Therefore, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where—

(a) dumping continued at any level above *de minimis* after the issuance of the order or the suspension agreement, as applicable;

(b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or

(c) dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes for the subject merchandise declined significantly.

The Department recognizes that, in the context of a sunset review of a suspended investigation, the data relevant to the criteria under paragraphs (a) through (c), above, may not be conclusive with respect to likelihood. Therefore, the Department may be more likely to entertain good cause arguments under paragraph II.C in a sunset review of a suspended investigation.

4. No Likelihood of Continuation or Recurrence of Dumping

The SAA at 889–90, and the House Report at 63, state that,

> [D]eclining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.

See also, the Senate Report at 52.

Therefore, the Department normally will determine that revocation of an antidumping order or termination of a suspended dumping investigation is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased. Declining margins alone normally would not qualify because the legislative history makes clear that continued margins at any level would lead to a finding of likelihood. *See* section II.A.3, above. In analyzing whether import volumes remained steady or increased, the Department normally will consider companies' relative market share. Such information should be provided to the Department by the parties.

The Department recognizes that, in the context of a sunset review of a suspended investigation, the elimination of dumping coupled with

steady or increasing import volumes may not be conclusive with respect to no likelihood. Therefore, the Department may be more likely to entertain good cause arguments under paragraph II.C in a sunset review of a suspended investigation.

5. Treatment of Zero or De Minimis Margins

Section 752(c)(4)(A) of the Act provides that a weighted-average dumping margin determined in the investigation or subsequent reviews that is zero or *de minimis* shall not by itself require the Department to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

Therefore, although the Department may consider the existence of a zero or *de minimis* dumping margin in making its determination of likelihood, a zero or *de minimis* dumping margin, in itself, will not require that the Department determine that continuation or recurrence of dumping is not likely. In accordance with section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any weighted-average dumping margin that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

B. Magnitude of the Margin of Dumping That is Likely to Prevail

1. In General

Section 752(c)(3) of the Act provides that the Department will provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The SAA at 890, and the House Report at 64, provide that the Department normally will select a margin "from the investigation, because that is the only calculated rate that reflects the behavior of exporters * * * without the discipline of an order or suspension agreement in place."

Therefore, except as provided in paragraphs II.B.2 and II.B.3, the Department normally will provide to the Commission the margin that was determined in the final determination in the original investigation. In certain situations, the Department may provide to the Commission the margin that was determined in the preliminary determination in the original investigation, *e.g.*, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested. Specifically, the Department normally will provide the company-specific margin from the investigation for each company regardless of whether the margin was calculated using a company's own information or based on best information available or facts available. Furthermore, in light of the legislative history discussed above, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. In addition, the Department normally will provide to the Commission a list of companies excluded from the order based on zero or *de minimis* margins, if any, or subsequently revoked from the order, if any.

In a sunset review of an antidumping duty finding, *i.e.*, where the original investigation was conducted by the Department of the Treasury ("Treasury"), the Department normally will provide to the Commission the company-specific margin or the all others rate included in the Treasury finding published in the **Federal Register**. If no company-specific margin or all others rate is included in the Treasury finding, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. If the first final results of administrative review of the finding do not contain a margin for a particular company, the Department normally will provide to the Commission, as the margin for that company, the first "new shippers" rate [1] established by the Department for the finding.

2. Use of a More Recently Calculated Margin

The SAA at 890–91, and the House Report at 64, provide that in certain instances, it may be more appropriate for the Department to provide the Commission with a more recently calculated margin. Specifically, the SAA and the House Report state that, "if dumping margins have declined over the life of an order and imports have remained steady or increased, [the Department] may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review." In addition, the SAA at 889–90, and the House Report at 63, state that, "declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked." *See also*, the Senate Report at 52.

Therefore, unless the Department finds no likelihood of continuation or recurrence of dumping, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins declined or dumping was eliminated after the issuance of the order or the suspension agreement, as applicable, and import volumes remained steady or increased. In analyzing whether import volumes remained steady or increased, the Department normally will consider the company's relative market share. Such information should be provided to the Department by the parties.

In addition, a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. Therefore, unless the Department finds no likelihood of continuation or recurrence of dumping, the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was as a result of the application of best information available or facts available.

3. Duty Absorption

a. In General

Section 751(a)(4) of the Act provides that, during the second or fourth administrative review of an order (or, for transition orders, during an administrative review initiated in 1996 or 1998 (*see* 19 CFR 351.213(j))), upon request, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to an order if the subject merchandise is sold in the

[1] In 1993, the Department began using the all others rate from the original investigation as the appropriate cash deposit rate for companies not covered by a review or the original investigation. Prior to that time, the Department's practice was to use a "new shippers" rate resulting from a particular review as the cash deposit rate for companies whose first shipment occurred after the period covered by the review. The Department used as the "new shippers" rate the highest of the rates of all responding firms with shipments during the review period. This "new shippers" rate is unrelated to new shipper reviews conducted pursuant to the URAA under section 751(a)(2)(B) of the Act.

United States through an importer who is affiliated with such foreign producer or exporter. The statute further provides that the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a sunset review.

Therefore, the Department will provide to the Commission, on a company-specific basis, its findings regarding duty absorption, if any, for all reviews in which the Department conducted a duty absorption analysis.

b. Effect on Magnitude of the Margin

The SAA at 885, and the House report at 60, state that,

> Duty absorption is a strong indicator that the current dumping margins calculated by [the Department] in reviews may not be indicative of the margins that would exist in the absence of an order. Once an order is revoked, the importer could achieve the same pre-revocation return on its sales by lowering its prices in the U.S. in the amount of the duty that previously was being absorbed.

See also, the Senate Report at 50. The SAA at 886, and the House Report at 61, also provide that if, in the fourth administrative review (or, for transition orders, for an administrative review initiated in 1998), the Department finds that absorption has taken place, the Department will take that into account in its determination regarding the dumping margins likely to prevail if an order were revoked. The Senate Report at 50, suggests that the Department's notification to the Commission of its findings on duty absorption should include, to the extent practicable, some indication of the magnitude of the absorption.

Therefore, notwithstanding paragraphs II.B.1 and II.B.2, where the Department has found duty absorption in the fourth administrative review of the order (or, for transition orders, in an administrative review initiated in 1998), the Department normally will—

(a) determine that a company's current dumping margin is not indicative of the margin likely to prevail if the order is revoked; and

(b) provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption.

The Department normally will adjust a company's most recent margin to take into account its findings on duty absorption by increasing the margin by the amount of duty absorption on those sales for which the Department found duty absorption.

C. Consideration of Other Factors

Section 752(c)(2) of the Act provides that, if the Department determines that good cause is shown, the Department also will consider other price, cost, market or economic factors in determining the likelihood of continuation or recurrence of dumping. The SAA at 890, states that such other factors might include,

> the market share of foreign producers subject to the antidumping proceeding; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of production; changes in manufacturing technology in the industry; and prevailing prices in relevant markets.

The SAA at 890, also notes that the list of factors is illustrative, and that the Department should analyze such information on a case-by-case basis.

Therefore, the Department will consider other factors in AD sunset reviews if the Department determines that good cause to consider such other factors exists. The burden is on an interested party to provide information or evidence that would warrant consideration of the other factors in question. With respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

III. Sunset Reviews in Countervailing Duty Proceedings

A. Determination of Likelihood of Continuation or Recurrence of a Countervailable Subsidy

1. In General

In accordance with section 752(b)(1) of the Act, in determining whether revocation of a countervailing duty order or termination of a suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider—

(a) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(b) whether any change in the program which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

2. Basis for Likelihood Determination

Consistent with the SAA at 879, and the House Report at 56, the Department will make its determination of likelihood on an order-wide basis.

3. Continuation, Temporary Suspension, or Partial Termination of a Subsidy Program

a. In General

The SAA at 888, states that,

> Continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary.

See also, the Senate Report at 52.

Therefore, the Department normally will determine that revocation of a countervailing duty order or termination of a suspended investigation is likely to lead to continuation or recurrence of a countervailable subsidy where—

(a) a subsidy program continues;

(b) a subsidy program has been only temporarily suspended; or

(c) a subsidy program has been only partially terminated.

b. Exception

The SAA at 888–89, provides that, if companies have a long track record of not using a program, the mere availability of the program should not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. However, the SAA at 888, also provides that as long as a subsidy program continues to exist, the Department should not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely.

Therefore, where a company has a long track record of not using a program, including during the investigation, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. In addition, where a subsidy program continues to exist, the Department normally will not consider company-specific or industry-specific renunciation of countervailable subsidies under that program, by themselves, as an indication that continuation or recurrence of a countervailable subsidy is unlikely.

4. Subsidies for Which Benefits Are Allocated Over Time

The SAA at 889, provides that, with respect to subsidies for which the benefits are allocated over time, such as grants, long-term loans, or equity infusions, the Department "will consider whether the fully allocated

benefit stream is likely to continue after the end of the review, without regard to whether the program that gave rise to the long-term benefit continues to exist."

Therefore, where the Department is examining a subsidy for which the benefits are allocated over time, the Department normally will determine that a countervailable subsidy will continue to exist when the benefit stream, as defined by the Department, will continue beyond the end of the sunset review, without regard to whether the program that gave rise to the long-term benefit continues to exist.

5. Elimination of a Subsidy Program or Exclusion of Subject Companies by the Foreign Government

The SAA at 888, states that,

> If the foreign government has eliminated a subsidy program, . . . [the Department] will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. For example, programs eliminated through administrative action may be more likely to be reinstated than those eliminated through legislative action.

Therefore, where the foreign government has eliminated a subsidy program or changes a program to exclude subject companies, the Department will consider—

(a) the legal method by which the government eliminated the program, and

(b) whether the government is likely to reinstate the program,

in determining whether revocation of a countervailing duty order or termination of a suspended investigation is likely to lead to continuation or recurrence of a countervailable subsidy. The Department normally will determine that programs eliminated through administrative action are more likely to be reinstated than those eliminated through legislative action.

6. Treatment of Zero or De Minimis Rates

a. In General

Section 752(b)(4)(A) of the Act provides that a net countervailable subsidy determined in the investigation or subsequent reviews that is zero or *de minimis* shall not by itself require the Department to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

Therefore, although the Department may consider the existence of a zero or *de minimis* countervailable subsidy rate in making its determination of likelihood, a zero or *de minimis* countervailable subsidy rate, in itself, will not require that the Department determine that continuation or recurrence of a countervailable subsidy is not likely. In accordance with section 752(b)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any countervailable subsidy rate that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

b. De Minimis Combined Benefits

The SAA at 889, and the House Report at 63, state that,

> [I]f the combined benefits of all programs considered by [the Department] for purposes of its likelihood determination have never been above *de minimis* at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of revocation or termination, [the Department] should determine that there is no likelihood of continuation or recurrence of countervailable subsidies.

Therefore, if the combined benefits of all programs considered by the Department for purposes of its likelihood determination have never been above *de minimis* at any time the order was in effect, and if there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of revocation or termination, the Department normally will determine that there is no likelihood of continuation or recurrence of countervailable subsidies. In accordance with section 752(b)(4)(B) of the Act and 19 CFR 351.106(c)(1), the Department will treat as *de minimis* any overall countervailable subsidy rate that is less than 0.5 percent *ad valorem* or the equivalent specific rate.

B. Net Countervailable Subsidy That is Likely to Prevail

1. In General

Section 752(b)(3) of the Act provides that the Department will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The SAA at 890, and the House Report at 64, provide that the Department normally will select a rate "from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place."

Therefore, except as provided in paragraph III.B.3, the Department normally will provide to the Commission the net countervailable subsidy that was determined in the final determination in the original investigation. In certain situations, the Department may provide to the Commission the net countervailable subsidy that was determined in the preliminary determination in the original investigation, *e.g.*, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested. In addition, the Department normally will provide to the Commission a list of companies excluded from the order based on zero or *de minimis* rates, if any, or subsequently revoked from the order, if any.

In a sunset review of a countervailing duty order where the original investigation was conducted by Treasury, the Department normally will provide to the Commission the net countervailable subsidy (sometimes previously called the net bounty, subsidy, or grant) from the first final results of administrative review published in the **Federal Register** by the Department, where the net countervailable subsidy was first calculated on an *ad valorem* basis.

2. Determination of Net Countervailable Subsidy; Company-Specific Rates

Prior to enactment of the URAA, the Department calculated company-specific countervailable subsidy rates in the original investigation only where such rates were "significantly different" from the country-wide rate. *See* 19 CFR 355.20(d) (1995). Since enactment of the URAA, and in accordance with section 777A(e)(1) of the Act, the Department, where possible, calculates individual countervailable subsidy rates in an investigation for each known exporter or producer of the subject merchandise (*see* section 777A(e)(2) of the Act (providing for an exception to the calculation of individual rates where it is not practicable to do so because of the large number of exporters or producers involved in the investigation)).

Therefore, except as provided in paragraph III.B.3, where a company-specific countervailing duty rate was determined for a particular company in the original investigation, the Department normally will provide that rate to the Commission as the net countervailable subsidy that is likely to prevail for that company if the order is revoked or the suspended investigation is terminated. Specifically, the Department normally will provide the company-specific countervailing duty rate from the investigation for each company, where available, regardless of whether the rate was calculated using a

company's own information or was based on best information available or facts available. If no company-specific countervailing duty rate was determined for a particular company in the original investigation, because the company's rate was not "significantly different" from the country-wide rate, the company was not specifically investigated, or the company did not begin shipping until after the order was issued, except as provided in paragraph III.B.3, the Department normally will provide to the Commission the country-wide rate or all others rate determined in the original investigation as the net countervailable subsidy that is likely to prevail for that particular company if the order is revoked or the suspended investigation is terminated.

3. Adjustments to the Subsidy

As discussed in paragraph III.B.1, the Department normally will provide to the Commission the net countervailable subsidy that was determined in the original investigation. However, the purpose of the net countervailable subsidy in the context of sunset reviews is to provide the Commission with a rate which represents the countervailable rate that is likely to prevail if the order is revoked or the suspended investigation is terminated. Furthermore, section 752(b)(1)(B) of the Act provides that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Consequently, although the SAA at 890, and the House Report at 64, provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.

Therefore, the Department may make adjustments to the net countervailable subsidy determined pursuant to paragraphs III.B.1 and III.B.2, including, but not limited to, the following:

(a) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program was terminated with no residual benefits and no likelihood of reinstatement, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. If, in an investigation, the Department found that a program had been terminated with no residual benefits subsequent to the period of investigation, the Department normally will consider this information in determining the net countervailable subsidy.

(b) The Department normally will not make adjustments to the net countervailable subsidy rate for programs that still exist, but were modified subsequent to the order, or suspension agreement, as applicable, to eliminate exports to the United States (or subject merchandise) from eligibility.

(c) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found a new countervailable program, or found a program previously not used but subsequently found countervailable, that was included in the new subsidy rate for the administrative review, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change.

(d) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and determined to increase the net countervailable subsidy rate for any reason, including as a result of the application of best information available or facts available, the Department may adjust the net countervailable subsidy rate determined in the original investigation to reflect the increase in the rate.

(e) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program is not countervailable based on sections 771(5B)(B), (C), or (D) of the Act, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change. Also, where a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement (*see* section 771(5B)(E)(i) of the Act), the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change, unless the Department determines to treat the subsidy as countervailable based upon notification from the Trade Representative under section 771(5B)(E)(ii) of the Act.

(f) Where the Department has conducted an administrative review of the order, or suspension agreement, as applicable, and found that a program is not countervailable based on section 771(5B)(F) of the Act, the Department normally will adjust the net countervailable subsidy rate determined in the original investigation to reflect the change.

(g) Where the Department has not conducted an administrative review of the order, or suspension agreement, as applicable, subsequent to the investigation, except as provided in paragraph III.C, the Department normally will not make adjustments to the net countervailable subsidy rate determined in the original investigation.

4. Nature of the Countervailable Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of a countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

C. Consideration of Other Factors

1. Programs Determined To Provide Countervailable Subsidies in Other Investigations or Reviews

Section 752(b)(2)(A) of the Act provides that if the Department determines that good cause is shown, the Department also will consider programs determined to provide countervailable subsidies in other investigations or reviews, but only to the extent that such programs—

(a) can potentially be used by the exporters or producers subject to the sunset review, and

(b) did not exist at the time that the countervailing duty order was issued or the suspension agreement accepted.

Therefore, the Department will consider such other programs in CVD sunset reviews if the Department determines that good cause to consider such other programs exists. The burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. In addition, with respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

2. Programs Newly Alleged To Provide Countervailable Subsidies

Section 752(b)(2)(B) of the Act provides that if the Department determines that good cause is shown, the Department also will consider programs newly alleged to provide countervailable subsidies, but only to

the extent that the Department makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the sunset review. The SAA at 889, states that,

> [S]ubsidy allegations normally should be made in the context of [administrative] reviews * * *, and [the Department is not expected] to entertain frivolous allegations in . . . [sunset] reviews. However, where there have been no recent [administrative] reviews or where the alleged countervailable subsidy program came into existence after the most recently completed [administrative] review, [the Department] may consider new subsidy allegations in the context of a * * * [sunset] review.

Therefore, the Department will consider programs newly alleged to provide countervailable subsidies if the Department determines that good cause to consider such programs exists. Furthermore, the Department normally will consider a new subsidy allegation in the context of a sunset review only where information on such program was not reasonably available to domestic interested parties during the most recently completed administrative review or the alleged countervailable subsidy program came into existence after that administrative review. The burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. In addition, with respect to a sunset review of a suspended investigation, where the Department determines that good cause exists, the Department normally will conduct the sunset review consistent with its practice of examining likelihood under section 751(a) of the Act.

[FR Doc. 98–10039 Filed 4–15–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On December 12, 1996, the United States Court of International Trade affirmed the Department of Commerce's final remand results affecting final assessment rates for the third administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions (with the exceptions of SKF GmbH, SKF Industrie S.p.A. and SKF Sverige AB which have filed appeals to the Court of Appeals for the Federal Circuit), we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews with the exception of those still under appeal.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Greg Thompson or Jay Biggs, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0410 or (202) 482–1690.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1997).

Background

On July 26, 1993, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1991 through April 30, 1992 (*AFBs III*) (58 FR 39729). These final results were amended on August 9, 1993, September 30, 1993, December 15, 1993 and February 28, 1994 (*see* 58 FR 42288, 58 FR 51055, 58 FR 65576 and 59 FR 9469, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Subsequently, two domestic producers, the Torrington Company and Federal-Mogul, and a number of other interested parties filed lawsuits with the U.S. Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT and CAFC issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in AFBs III:

Federal-Mogul Corporation and the Torrington Company v. *United States*, Slip Op. 96–37, (February 13, 1996) with respect to France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom;

Koyo Seiko Co. v. *United States*, Fed. Cir. Nos. 93–1525, 93–1534 (September 30, 1994) with respect to Japan;

NSK Ltd. and NSK Corporation v. *United States*, Slip Op. 94–175 (November 14, 1994) with respect to Japan;

NSK Ltd. and NSK Corporation v. *United States*, Slip Op. 94–181 (November 28, 1994) with respect to Japan;

NSK Ltd. v. *United States*, Slip Op. 96–125 (August 5, 1996) with respect to Japan;

SKF USA Inc. v. *United States*, Slip Op. 95–82 (May 4, 1995) with respect to Italy;

SKF USA Inc. v. *United States*, Slip Op. 96–13 (January 10, 1996) with respect to France;

SKF USA Inc. v. *United States*, Slip Op. 96–15 (January 16, 1996) with respect to Italy;

SKF USA Inc. v. *United States*, Slip Op. 96–16 (January 16, 1996) with respect to Sweden;

FAG Kugelfischer Georg Schafer KgaA., FAG Italia S.p.A, FAG (U.K.) Limited, Barden Corporation Limited, FAG Bearings Corporation and The Barden Corporation v. *United States*, Slip Op. 96–108 (July 10, 1996) with respect to Italy, Germany, and the United Kingdom;

INA Walzlager Schaeffler KG and INA Bearing Company, Inc. v. *United States*, Slip Op. 96–26 (January 29, 1996) with respect to Germany;

SNR Roulements v. *United States*, Slip Op. 98–6 (January 23, 1998) with respect to France;

Federal-Mogul Corporation and the Torrington Company v. *United States*, Slip Op. 96–193 (December 12, 1996)

with respect to France, Germany, Japan, Singapore, and Thailand;

Federal-Mogul Corporation and the Torrington Company v. *United States*, Slip Op. 97–9 (January 22, 1997) with respect to Japan.

In the context of the above-cited litigation, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department *inter alia* to: (1) Change its methodology for computing inventory carrying costs; (2) reallocate NSK's advertising expenses; (3) deny an adjustment to foreign market value (FMV) for home-market pre-sale freight expenses where FMV was calculated using purchase price; (4) develop a methodology which removes post-sale price adjustments and rebates paid on sales of out-of-scope merchandise from its calculations of FMV or, if no viable method can be developed, deny such an adjustment in its calculation of FMV; (5) reconsider its decision to accept NTN's downward adjustments to United States indirect selling expenses for interest paid on cash deposits; (6) determine whether NTN demonstrated that selling expenses for aftermarket customers were different than for distributors and OEMs and, if not, collapse sales to aftermarket customers and distributors to form a single level of trade; (7) provide a reasonable explanation as to why the Department changed its findings in the original investigation that NMB/Pelmec's "Route B" sales are third-country sales or, if none can be given, exclude these sales from the home-market database; (8) determine whether NMB/Pelmec's related-party sales were made at market prices and, if not, exclude such sales from its calculation of profit; and (9) correct various clerical errors.

On December 12, 1996, the CIT affirmed the Department's final remand results affecting final assessment rates for all the above cases (except the reviews involving SKF which are still subject to further litigation). *See Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 96–193 (December 12, 1996). As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters, with the exception of those cases which are still under appeal, and we will subsequently instruct the Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, except for those cases still under appeal, for the period May 1, 1991, through April 30, 1992. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
FRANCE			
SKF	1.97	(1)	(3)
SNR	1.13	0.81	(2)
GERMANY			
FAG	11.83	17.63	(3)
Fichtel & Sachs	(3)	(2)	(2)
INA	23.19	(3)	(2)
NTN	(3)	(1)	(1)
ITALY			
FAG	5.36	(3)	
JAPAN			
Koyo	8.28	3.19	(3)
Nachi	7.59	(3)	(2)
NPB	7.90	(2)	(2)
NTN	2.94	0.73	6.41
NSK	17.85	27.09	(1)
Singapore			
NMB/Pelmec	8.54		
THAILAND			
NMB/Pelmec	0.17		
UNITED KINGDOM			
Barden Corporation	7.57	(3)	
FAG	21.77	(3)	
RHP–NSK	50.32	45.61	

(1) No U.S. sales during the review period.
(2) No review requested.
(3) No rate change for a class or kind due to litigation.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in *AFBs III* and the three previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–10040 Filed 4–15–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Notice of Rescission of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping new shipper review.

SUMMARY: On December 15, 1997, the Department of Commerce (the Department) published in the **Federal Register** (62 FR 65666) a notice announcing the initiation of a new shipper antidumping review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway, covering the period April 1, 1996, through September 30, 1997, and one manufacturer/exporter of the subject merchandise, Nornir Group A/S. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the interested party.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Background

On October 31, 1997, Nornir Group A/S (Nornir) requested a new shipper review of its U.S. sales of subject merchandise. On December 15, 1997, in accordance with 19 CFR Sec. 351.214(b), we initiated the new shipper review of this order for the period April 1, 1996, through September 30, 1997. On January 16, 1998, the respondent, Nornir, withdrew its request for review.

Rescission of Review

The respondent withdrew its request within the time limit provided by the Department's regulations at 19 CFR 351.214(f)(1). Therefore the Department is terminating this review. We note, however, that this is the second consecutive request for termination made by Nornir. Pursuant to the agency's inherent authority to prevent the abuse of its administrative procedures, we will carefully evaluate any future requests for a new shipper review by this party to ensure that it is not attempting to manipulate the requirements of the new shipper review process.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 354.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversation to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a sanctionable violation.

This determination is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214(f)(3).

Dated: April 10, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–10169 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; certain hot-rolled lead and bismuth carbon steel products from the United Kingdom.

SUMMARY: On December 9, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth steel products from the United Kingdom. The review covers two manufacturers/exporters, British Steel Engineering Steels Limited (BSES) and Glynwed Metal Processing Limited (Glynwed), and the period March 1, 1996 through February 28, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 353 (April 1, 1996).

Background

On December 9, 1997, the Department published in the Federal Register (62 FR 64803) the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled lead and bismuth steel products from the United Kingdom (58 FR 15324, March 22, 1993). On January 13, 1998, petitioner, Inland Steel Bar Company, submitted comments on the Department's preliminary results. On January 20, 1998, BSES submitted rebuttal comments. We held a hearing on January 22, 1998. The Department has now completed the review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent of more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

This review covers two manufacturers/exporters of certain hot-rolled lead and bismuth steel products, BSES and Glynwed, and the period March 1, 1996 through February 28, 1997.

Analysis of the Comments

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from the petitioner, Inland Steel Bar Company, and rebuttal comments from BSES.

Comment 1: Petitioner alleges that the Department erred in applying the arm's-length test after incorporating BSES's model matching concordance into the margin calculation program. Citing the September 26, 1997 "Antidumping Duty Investigation on Steel Wire Rod from

Canada Analysis Memorandum for Preliminary Results of Sidbec-Dosco (Ispat) Inc. (SDI) and Walker Wire," petitioner asserts that the Department should follow standard practice and apply the arm's-length test prior to incorporating the model matching concordance for BSES.

Petitioner further asserts that applying the arm's-length test prior to incorporating the model matching concordance is consistent with the intent of the Statement of Administrative Action (SAA). Petitioner concludes that non-arms's-length sales cannot be used in the concordance because the SAA, in reference to the starting point for calculating normal value, states that the Department will "ignore sales to affiliated parties which cannot be demonstrated to be at arm's length prices for purposes of calculating normal value." *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 827 (1994).

Petitioner also asserts that for Glynwed, the other respondent in this review, the Department generated a product concordance after completing the arm's-length test. Petitioner states that the Department may use different methodologies for different respondents only if it (1) offers a reasonable and rational explanation for doing so, and (2) demonstrates that the practice is in accordance with the applicable statute. Petitioner asserts that the Department offered no reasonable and rational explanation for using a different methodology for BSES.

Petitioner also claims that BSES's allegedly improper model matching concordance has a substantial impact on the Department's analysis. Petitioner claims that it generated a model matching concordance according to the Department's standard methodology, and claims that it produced a vastly different model match concordance. Petitioner claims that the Department's standard concordance methodology is consistent with the statutory preference for computing dumping margins on price-to-price comparisons rather than constructed value. Petitioner also claims that the Department has the authority to revise the concordance, as it did with Glynwed for the preliminary results.

BSES argues that the Department should continue to perform the arm's-length test after incorporating the model matching concordance supplied by BSES. BSES argues that the Department has the discretion to decide the timing of the concordance and that, while the Department's practice has been mixed with respect to whether to perform the arm's-length test before or after applying the model matching concordance, in this proceeding the Department's practice has been consistent; the Department has always performed the arm's-length test after incorporating the model matching concordance provided by BSES. BSES maintains that the Department made a determination that this methodology works and should maintain that determination unless there are good reasons to change.

BSES suggests that petitioner is objecting to the Department's established model matching concordance methodology for the first time in this review because, in the circumstances of this fourth review, constructed value actually yields a lower margin for BSES than price-to-price matching. BSES agrees that the methodology has an impact, but asserts that the correct methodology should not be chosen based on which alternative results in the higher dumping margin. BSES further asserts that it is not appropriate for the Department to change methodology now because BSES has not had an opportunity to develop a factual record, discuss at verification, or defend the point because the concordance methodology was not an issue raised or challenged by the Department. BSES also claims that the products petitioner proposes to match are so dissimilar that normal value (NV) would be based on constructed value anyway or on very strange matches. If, however, the arm's length test is run after the creation of the concordance, there are better matches made.

Department's Position: We agree with petitioner. Although in prior segments of this proceeding we have run the arm's-length test after the creation of the concordance, the United States Court of Appeals for the Federal Circuit has since ruled that [T]he initial consideration for Commerce is whether, under section 1677b(a)(1), the sales are "in the usual commercial quantities and in the ordinary course of trade." 19 U.S.C. 1677b(a)(1). If the sales are not in the ordinary course of trade, then Commerce should exclude that specific class of merchandise * * * because a determination of the antidumping duty cannot be made." *CEMEX, S.A.* v. *United States*, slip op. 97–1151 at 15 (Fed. Cir. 1998). It is clear from this ruling that sales made outside the ordinary course of trade, which include those sales failing the arm's-length and cost tests, must not be considered in the antidumping margin calculation. We have therefore treated the arm's-length and cost tests the same way and have run both tests prior to creating the product concordance.

We are making this change to the preliminary results regardless of whether the dumping margins would be affected positively or negatively. The methodology has not been chosen based on which alternative results in a higher margin, but rather on the court's decision.

BSES's claim that it did not have an opportunity to defend its concordance methodology is erroneous, because it had just such an opportunity in its rebuttal to petitioner's comments. Furthermore, except for the elimination of sales that failed the arm's-length and costs tests, as described above, our concordance methodology is identical to that used by respondent.

Comment 2: Petitioner asserts that the Department should redefine BSES's CONNUMs (control numbers assigned by respondent to identify each unique product by its physical characteristics), aggregating the CONNUMs to correspond to residual codes in BSES's cost accounting system. Petitioner points out that, for the preliminary results, the Department used CONNUMs which BSES segregated to the residual level, stating that "residuals are an essential part of the product." *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Antidumping Administrative Review*, 62 FR 64803 (December 9, 1997) (*Preliminary Results*). Petitioner contends that not all residual or other chemical differences are sufficiently different to constitute separate products for the Department's purposes, citing to *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod from Canada*, 62 FR 51572, 51572 (October 1, 1997) (*Steel Wire Rod*). Petitioner claims that BSES's reported CONNUMs, defined to the residual level, over-segregate the merchandise and that this produces fewer valid price-to-price comparisons and distorts the margin due to overtechnical product differences.

Petitioner contends that BSES's residual levels can only be relevant to the extent that BSES actually tracks these residual costs in its own cost accounting system, and, to the extent it does not, it has improperly subdivided products that should be considered identical. Petitioner states that at verification, the Department found that BSES failed to report product-specific costs, as requested by the Department in the questionnaire. Petitioner claims that the Department has rejected the proposition that identical products must be identical for all purposes. Petitioner concludes that any merchandise with

the same production cost is sufficiently identical to be considered identical for model matching comparison purposes, even though customers request different residual levels and even if all products in a CONNUM are not fully interchangeable commercially. Petitioner states that in a separate case the Department has created residual baskets despite the fact that customers order by residual levels. *See* the Department's April 21, 1997 questionnaire for the *Sales at Less Than Fair Value Investigation of Steel Wire Rod from Trinidad and Tobago*, page B–9. Furthermore, petitioner claims that BSES obscured its cost reporting methodology to hide the fact that it was using aggregate costs for reporting its CONNUMs. Petitioner concludes that the Department should aggregate BSES's CONNUMs to correspond to BSES's cost accounting system because 1) these cost codes define the limits at which products can be considered different, and 2) they must serve as facts available, due to what petitioner says is BSES's misreporting of its costs.

Petitioner also points out that in respondent's concordance, GRADE (a code used to identify chemical composition and tolerance in the desired chemical composition) and PRODCOD (the chemical composition code used internally by the company to define the chemical makeup of its products) are out of sequence in one instance, and that there is one instance of an unexplained gap in GRADE.

BSES argues that its product codes, defined to the residual level, designate the relevant physical characteristics and should thus be used for model matching. BSES states that its product codes specify the exact levels of various required chemical elements in the steel and also the highest permissible levels of the undesirable residual elements. BSES contends that these codes are used in the ordinary course of trade and that the product code is an essential part of the product's identity, from order to invoicing, as confirmed by the Department at verification. *See* the January 7, 1998 Memorandum to the File from Rebecca Trainor and Gideon Katz through Maureen Flannery and Edward Yang: "Report on the Sales and Cost Verification of British Steel Engineering Steels (BSES) in the Fourth Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom" (Verification Report), page 5.

BSES states that, in other segments of this proceeding, the Department rejected petitioner's arguments to ignore any differences in the chemical compositions of the two products, and match using a CONNUM that ignores residuals, or trace elements. In support of its argument, BSES cites *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Determination of Sales at Less than Fair Value* (*LTFV Investigation Final Determination*), 58 FR 6207, 6209 (January 27, 1993) and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Administrative Review* (*First Review Final Results*), 60 FR 44009, 44011 (August 24, 1995). BSES states that the Department determined, in both instances, that it is appropriate to perform the model match concordance using CONNUMs defined to the residual level because "the product differences claimed by [BSES] due to residuals are commercially significant and not incidental—they are designed into the product."

BSES also argues that redefining the model matching concordance to correspond to BSES's cost accounting system is not appropriate because the cost accounting system groups product codes only for administrative convenience since BSES does not individually track the costs of certain similar products. BSES claims that the cost accounting groupings of product codes do not suggest lack of product individuality within the group, product substitutability, or equal product costs. BSES maintains that it is the product code, not the cost grouping, that describes the characteristics of steel needed to meet customer specifications. BSES further contends that the Department bases its model matching methodology on similarity of physical characteristics, not similarity of costs.

BSES argues that petitioner's references to the Department's treatment of residuals in the questionnaire and preliminary notice in other cases cannot be considered relevant here because these cases involve plain carbon wire rod, an entirely different product, and producers that have absolutely nothing in common with BSES. BSES further argues that BSES' products are highly sophisticated engineering steels used in high-performance applications, in which slight variations in chemical composition can result in greatly differing performance. BSES claims that fine-tuned residuals levels may not be vital in plain carbon wire rod, but they are absolutely vital in BSES' engineering steels.

BSES further asserts that redefining the model matching concordance would have no practical effect on the margin analysis. BSES claims that if the Department implements petitioner's methodology, only three pairs of product codes (out of many hundreds) would be affected, and that any effect on the margin may be minuscule. Finally, BSES claims that it has reported product costs just as instructed, and that this is not a facts available situation. BSES contends that the Department should reject petitioner's request because it is both unjustified and inconsequential.

Department's Position: The Department disagrees with petitioner. The creation of a product concordance inherently relies upon the matching of significant physical characteristics, not on cost groupings in a company's cost accounting system. As noted by respondent, the Department stated in the *LTFV Investigation Final Determination* that "in order for merchandise to be considered identical, all physical characteristics * * * must be the same." 58 FR at 6207, 6209 (January 27, 1993).

Throughout each segment of this proceeding the Department has determined that residual content is an essential physical characteristic in the creation of the model match product concordance. For example, we determined that "[p]roduct differences due to residuals are commercially significant and not incidental, as they are designed into the product. Therefore, CONNUM is the appropriate variable to be used for model matching." *See First Review Final Results*, 60 FR at 44009, 44011 (August 24, 1995). Petitioner has not placed on the record evidence that residual or other chemical differences are not significant enough to create separate products for model matching purposes. In this review, the Department once again verified the importance of residuals. We found that residual levels are critical to BSES and to its customers. *See Sales Verification Report* at 5. Thus, we are making no change in the use of residuals in model matching.

We have corrected one instance in which the GRADEs assigned to certain PRODCODs were not consistent with the overall sequence of such assignments in the key to matching criteria. There is no evidence that there were incorrect matches because of any gap in GRADE.

Comment 3: Petitioner asserts that the Department should increase BSES's general and administrative expenses (G&A) to include the costs of a mill closure incurred during the period of review (POR). Petitioner states that BSES accrued these costs in the year it announced the closure, later setting the 1997 costs off against this earlier accrual. Petitioner contends that BSES

did not include these actual costs of closure in the reported amounts for the POR G&A.

Petitioner claims that BSES's accounting technique artificially and improperly eliminated the actual costs incurred by BSES during the POR. Petitioner claims that BSES concedes as much in its supplemental response by merely stating that the mill closure "had no effect on the FY 1997 profit and loss account." *See* BSES's October 17, 1997 Supplemental Response, pages 22–23. Petitioner maintains that the Department should include these costs in BSES's G&A expenses because BSES incurred actual costs associated with the mill closure during the POR.

BSES argues that the Department should not increase G&A expenses to include the mill closure costs because BSES reported these expenses in its financial accounts for FY 1995 in accordance with British Generally Accepted Accounting Principles and, therefore, they do not appear in BSES's financial accounts for 1997, the year used as the basis of the cost analysis in this review. BSES maintains that the Department's practice is to include costs as they appear on a company's audited financial statement, and cites to *Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan*, 55 FR 34585 (August 23, 1990). BSES claims that, because the entire closure costs were accrued and reported in BSES's FY 1995 financial statements, these costs should have no impact on the 1997 costs used for analysis in this review. BSES further notes that the Department verified the reported G&A expenses.

Department's Position: The Department agrees with petitioner. We are including the actual closure costs for this mill in BSES's G&A for this POR. It is the Department's general practice to include accruals which are recognized in the respondent's audited financial statements in the COP/constructed value calculations. *See Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13836 (March 28, 1996). However, the Department has not in any prior review included the closure costs for this mill. *See* the March 31, 1998 Memorandum to the file from Gideon Katz: "Phone conversation with BSES regarding mill closure costs." Since it is necessary to account for these costs, and since the actual costs were incurred in the 1996–1997 period of review, we are including these actual costs in BSES's G&A for this POR.

Comment 4: Petitioner asserts that the Department should reject BSES's reported U.S. packing expenses because the Department found these expenses to be inaccurate at verification. Petitioner further asserts that the Department should set all U.S. packing costs to the highest packing cost calculated for any U.S. sale, and then increase all home market prices by this highest reported packing cost.

BSES argues that the Department should not make the changes to packing costs that petitioner requested because the Department already made a slight adjustment to packing costs in the preliminary results to reflect small discrepancies found at verification. BSES claims that the Department would have to make any packing adjustment to both the U.S. and home market products because BSES packs all its products in the exact same manner. BSES claims that there could thus be no impact on the margin. BSES asserts that additional changes would be unnecessary and improper.

Department's Position: The Department disagrees with petitioner. The discrepancy in packing costs discovered at verification was minor and the verifiers were easily able to derive the correct figures for actual packing costs. Thus, it is appropriate to use corrected packing costs for both markets, which we did in the preliminary results and are continuing to do for these final results.

Final Results of Review

We determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
British Steel Engineering Steels Limited (BSES)(formerly United Engineering Steels Limited)	03/01/96–02/28/97	18.18
Glynwed Metal Processing Limited (Glynwed)	03/01/96–02/28/97	7.69

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. Because there is a concurrent review of the countervailing duty order on the subject merchandise, final assessments for BSES and Glynwed will reflect the final results of the countervailing duty administrative review in accordance with 19 CFR 353.41(d)(iv). The Department will issue appraisement instructions directly to the Customs Service. For assessment purposes, we intend to calculate importer-specific assessment rates.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed companies 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 original 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) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 25.82 percent, the "all others" rate established in the LTFV investigation (58 FR 6207, January 27, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification of Interested Parties

This notice also serves as a 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 353.34(d). Timely written 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.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675 (a)(1) and 19 U.S.C. 1677f(i)(1)) and 19 CFR 353.22.

Dated: April 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–10038 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–806]

Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Notice of Court Decision

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

SUMMARY: On February 25, 1998, the Court of International Trade affirmed the Department of Commerce's remand determination in *Taiwan International Standard Electronics, Ltd.* v. *United States*, Court No. 92–08–00532, and *Tecom Co., Ltd. v.* United States, Court No. 92–08–00538. These cases involve litigation challenging the Department of Commerce's final results of the August 3, 1989, through November 30, 1990, antidumping duty administrative review of certain small business telephone systems and subassemblies from Taiwan. This Court decision was not in harmony with the Department's original determination in this review.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Office 2, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1992, the Department published notice of its final results of antidumping duty administrative review of certain small business telephone systems and subassemblies from Taiwan, covering the period August 3, 1989, through November 30, 1990. *Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Final Results of Antidumping Duty Administrative Review*, 57 FR 29283 (July 1, 1992). In these final results, the Department determined dumping margins of 129.73 percent ad valorem for Taiwan International Standard Electronics, Ltd. (TAISEL) and 18.10 percent ad valorem for Tecom Co., Ltd. (Tecom) for the period of review (POR). Following publication of the Department's final results, TAISEL and Tecom filed lawsuits with the Court of International Trade (CIT) challenging the Department's final results.

In *TAISEL* v. *United States*, Slip-Op. 97–40 (April 4, 1997), the CIT directed the Department to: (1) Reconsider TAISEL's response to determine whether the Department can exclude returned entries of SBTs covered by canceled sales from assessment of antidumping duties; and (2) assign to TAISEL a best information available (BIA) rate consistent with the Federal Circuit's decision in *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993). On July 3, 1997, in its remand determination, the Department: (1) Excluded from assessment of duties certain entries for which TAISEL provided documentation showing that such entries were returned as a result of canceled sales; and (2) assigned TAISEL a BIA margin based on the margin recalculated for Tecom in the same remand. As a result of this redetermination, the Department assigned a BIA margin of 8.24 percent to TAISEL for the POR.

In *Tecom Co.* v. *United States*, Slip-Op. 97–42 (April 4, 1997), the CIT directed the Department to: (1) Use Tecom's data contained on a computer tape submitted on July 29, 1991; (2) reconsider Tecom's claims for circumstance-of-sales adjustments, as well as its claim for an adjustment to foreign market value (FMV) for the provision of free gifts; and (3) reconsider Tecom's claim for a level-of-trade adjustment. In its July 3, 1997, remand determination, the Department: (1) Used the data contained on the July 29, 1991, computer tape; (2) disallowed Tecom's claimed circumstance-of-sale adjustments as well as its claimed adjustment to FMV for free gifts; and (3) granted a level-of-trade adjustment. As a result of this redetermination, the Department calculated a dumping margin of 8.24 percent for Tecom for the POR.

On February 25, 1998, the CIT affirmed these redeterminations.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Court of Appeals for the Federal Circuit (CAFC) held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, Commerce must suspend liquidation pending the expiration of the period to appeal the CIT's February 25, 1998 ruling or, if that ruling is appealed, pending a final decision by the CAFC.

Dated: April 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–10167 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Amended Final Determination and Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone: (202) 482–1776 or (202) 482–0498, respectively.

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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 353 (April 1, 1996).

Amended Final Determination

In accordance with section 735(a) of the Act, on February 23, 1998, the Department made its final

determination that static random access memory semiconductors (SRAMs) from Taiwan, are being, or are likely to be, sold in the United States at less than fair value (63 FR 8909). Subsequent to the final determination, on February 25, 1998, March 3, 1998, and March 6, 1998, we received allegations, timely filed pursuant to 19 CFR 353.28(b), from Winbond Electronics Corporation (Winbond), Integrated Silicon Solutions, Inc. (ISSI), and Alliance Semiconductor Corporation (Alliance), respectively, that the Department made ministerial errors in its final determination. We did not receive comments from United Microelectronics Corporation (UMC). In addition, on March 5, 1998, the petitioner alleged that the Department made ministerial errors in the final determination with respect to the calculations performed for Alliance and ISSI. We received comments from Alliance responding to the petitioner's allegations on March 12, 1998. We received comments from the petitioner responding to Alliance's allegations on March 13, 1998.

We have determined, in accordance with 19 CFR 353.28(d), that ministerial errors were made in our final margin calculations. Specifically, the Department made ministerial errors in its final determination with respect to the following issues: (1) The calculation of the indirect selling expense factor used to compute Alliance's constructed value; (2) the calculation of the constructed export price/commission offset for Alliance; (3) the use of facts available for sales with cost data reported for a subsequent quarter by Alliance; (4) the calculation of U.S. movement expenses incurred by Alliance; (5) the calculation of ISSI's revised general and administrative expenses; and (6) the calculation of U.S. inventory carrying costs incurred by Winbond. In addition, we revised the cost test in the respondents' final margin programs so that the cost calculations are consistent with the description of the cost test in the **Federal Register** notice. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, *see* Memorandum to Louis Apple from the Team, dated March 19, 1998. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of SRAMs from Taiwan to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Company	Original margin	Revised margin
Alliance	50.58	50.15
ISSI	7.59	7.56
UMC	93.87	93.71
Winbond	102.88	101.53
All Others	41.98	41.75

Scope of Order

The products covered by this order are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this order includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

The scope of this order does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards).

The SRAMs within the scope of this order are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Order

On April 9, 1998, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from Taiwan.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all entries of SRAMs from Taiwan. These antidumping duties will be assessed on all unliquidated entries of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after October 1, 1997, the date on which the Department published its preliminary determination in the **Federal Register** (62 FR 51442). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of SRAMs not specifically listed below.

The ad valorem weighted-average dumping margins are as follows :

Manufacturer/producer/exporter	Revised weighted-average margin percentage
Alliance Semiconductor Corporation	50.15
Integrated Silicon Solutions (Taiwan), Inc.	7.56
United Microelectronics Corporation	93.71
Winbond Electronics Corporation	101.53
All Others	41.75

This notice constitutes the antidumping duty order with respect to SRAMs from Taiwan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: April 13, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–10235 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803 and A–834–803]

Titanium Sponge From the Russian Federation and Republic of Kazakstan: Postponement of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending by 60 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping finding on titanium sponge from the Russian Federation (A–821–803) and the Republic of Kazakstan (A–834–803), covering the period August 1, 1996, through July 31, 1997, since it is not practicable to complete these reviews within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351 (1998).

Background

On September 25, 1997 (62 FR 50292), the Department of Commerce (the Department) initiated administrative reviews of the antidumping findings on titanium sponge from the Russian Federation and the Republic of Kazakstan, covering the period August 1, 1996, through July 31, 1997. In our notice of initiation, we stated our intention to issue the final results of these reviews no later than August 31, 1998. On February 10, 1998, the Department determined that due to the complexity of the legal and methodological issues presented by these reviews, it was not practicable to complete these reviews within the time limits mandated by the Act. *See* Memorandum to Richard Moreland Concerning the Extension of Case Deadlines, dated February 5, 1998. Accordingly, the Department postponed the preliminary determinations by 60 days.

Postponement of Preliminary and Final 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.

On February 10, 1998, when the Department first postponed the preliminary determinations of these cases, we evaluated the complexity of the legal and methodological issues presented by these reviews and conservatively estimated that a 60 day postponement would be sufficient to allow for a complete analysis prior to issuing the preliminary determinations. However, after further development of the issues presented in these reviews, we now realize that our initial estimate of the time needed to complete the preliminary analysis in each case was insufficient. Therefore, we determine that it is not practicable to complete these reviews within the current time frame because of the complexity of the legal and methodological issues in these reviews and are postponing the preliminary determinations of these cases by an additional 60 days. *See* Memorandum to Maria Harris Tildon Concerning the Extension of Case Deadlines dated April 6, 1998.

Due to the 60 day extension, the deadline for issuing the preliminary results of these reviews is now no later than September 1, 1998. The deadline for issuing the final results of these reviews will be no later than 120 days from the publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 7, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, for Import Administration.

[FR Doc. 98–10037 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey; Final Results and Partial Rescission of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On December 9, 1997, the Department of Commerce published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty orders on certain welded carbon steel pipe and tube and welded carbon steel line pipe from Turkey for the period January 1, 1996 through December 31, 1996 (62 FR 64808). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Reviews* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: April 16, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, the review of the order on certain welded carbon steel pipe and tube (pipe and tube) covers

Borusan Birlesik Boru Fabrikalari A.S. and Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Group). The review of the order on welded carbon steel line pipe (line pipe) covers Mannesmann-Sumerbank Boru Endustrisi T.A.S. (Mannesmann). These reviews cover the period January 1, 1996 through December 31, 1996, and 21 programs.

The Department also received a timely request from Wheatland Tube Company and the Maverick Tube Corporation (the petitioners) to conduct reviews of Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan), Yucel Boru ve Profil Endustrisi A.S. (Yucel Boru), Bant Boru Sanayii ve Ticaret A.S. (Bant Boru), Erkboru Profil San ve Tic A.S. (Erkboru). These companies did not export pipe and tube or line pipe to the United States during the period of review. Therefore, in the preliminary results notice, we rescinded the reviews with respect to these companies.

Since the publication of the preliminary results on December 9, 1997 (62 FR 64808), the following events have occurred. We invited interested parties to comment on the preliminary results. On January 8, 1997, a case brief was submitted by the Government of the Republic of Turkey (GRT), Mannesmann, which exported line pipe, and the Borusan Group, which exported pipe and tube to the United States during the review period (the respondents). On January 15, 1998, a rebuttal brief was submitted by the petitioners.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Because these administrative reviews were initiated on April 24, 1997, 19 CFR Part 355 is applicable.

Scope of the Reviews

Imports covered by these reviews are shipments from Turkey of two classes or kinds of merchandise: (1) Certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501; and (2) Certain welded carbon steel line pipe with an outside diameter of 0.375 inch or more, but not more than 16 inches, and with a wall thickness of not less than 0.065 inch. These products are produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–L or API–LX. These products are classifiable under the *Harmonized Tariff Schedule of the United States* (HTSUS) as item numbers 7306.30.10 and 7306.30.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based upon the responses to our questionnaire and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. *Pre-shipment Export Credit.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties. However, a review of the record has led us to modify the calculations. In the preliminary results, we inadvertently did not calculate the benefit on two loans for the Borusan Group. We also amended our calculations of the benefit from all loans of the Borusan Group to conform with the term of the commercial loans obtained by the company. Accordingly, the net subsidies for this program have changed from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	0.22
Mannesmann	0.29

2. *Freight Program.* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below (see comments 3 and 4, Adjustment of the Freight Program Denominator), has led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidies for this program have changed and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	2.43
Mannesmann	3.28

3. *Foreign Exchange Loan Assistance.* In the preliminary results, we found that this program conferred countervailable subsidies on pipe and tube. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	0.43

4. *Incentive Premium on Domestically Obtained Goods.* In the preliminary results, we found that this program conferred countervailable subsidies on pipe and tube. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	0.01

5. *Investment Allowance.* In the preliminary results, we found that this program conferred countervailable subsidies on pipe and tube. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	0.02

B. New Program Determined to Confer Subsidies

Deduction from Taxable Income for Export Revenues. In the preliminary results, we found that the Deduction from Taxable Income for Export Revenues conferred countervailable benefits on the subject merchandise. We did not receive any comments on this program from the interested parties.

Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	<0.005
Mannesmann	0.16

II. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Resource Utilization Support.
2. State Aid for Exports Program.
3. Advance Refunds of Tax Savings.
4. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank).
5. Past Performance Related Foreign Currency Export Loans (Eximbank).
6. Export Credit Insurance (Eximbank).
7. Subsidized Turkish Lira Credit Facilities.
8. Subsidized Credit for Proportion of Fixed Expenditures.
9. Fund Based Credit.
10. Export Incentive Certificate Customs Duty & Other Tax Exemptions.
11. Resource Utilization Support Premium (RUSP).
12. Regional Subsidies.

(a) Additional Refunds of VAT (VAT + 10%).

(b) Postponement of VAT on Imported Goods.

(c) Land Allocation (GIP).

(d) Taxes, Fees (Duties), Charge Exemption (GIP).

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Measurement of Countervailable Benefit: Earned Versus Receipt Basis

The respondents argue that the Department's preliminary finding that exporters could not "predict at the time of export what the benefit would be" under the Freight Program was in error and is contrary to the Department's long-standing practice. The respondents state that the Department's practice is to measure benefits on the date of export in cases where the benefit is earned on a shipment-by-shipment basis, and the exporter knows the amount of the benefit at the time of export. Thus, because the exporters earned the benefit on a shipment-by-shipment basis upon exportation, and knew the precise U.S. dollar amount of the benefit at the time of exportation, the benefit should be measured on an "earned basis."

The respondents also cite, but do not discuss, several cases to demonstrate the Department's practice of measuring benefits on the date of export in cases where the benefit is earned on a shipment-by-shipment basis, and the exporter knows the amount of the benefit at the time of export. Therefore, since the Freight Program encompasses these facts, they argue that, in order to apply this rule consistently, the Department must calculate the benefits under the Freight Program on an "as earned" basis, or explain the reason for the methodological change.

In addition, the respondents claim that in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews*, 62 FR 16782, 16787 (April 8, 1997) and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews*, 62 FR 43984 (August 18, 1997) (*Pipe and Tube and Line Pipe 1995*), the Department countervailed benefits provided under the Export Performance Credit program, which are similar to those provided under the Freight Program, on the date the merchandise was exported. The respondents state that the Export Performance Credit program provided credits to exporters based on a percentage of the f.o.b. value of their exports, and the Freight Program provided rebates to exporters in the amount of $50 per ton for merchandise exported on Turkish vessels, and $30 per ton for non-Turkish vessels. They argue that the exporters did not know, at the time of export, the exact rate of exchange that would be used to convert the dollar amount to Turkish Lira (TL) under either of the programs and, therefore, the exporters did not know the "precise" amount of the benefit in TL that they would receive at a later date.

The respondents also claim that, in designing the Freight Program, the GRT was well aware that Turkish companies invoice their export shipments in U.S. dollars. Because both the benefit and the sales value were expressed in U.S. dollars, they claim that a benefit denominated in U.S. dollars would directly affect the price Turkish companies charged their customers. By contrast, a benefit denominated in TL that would be given at an unspecified later date would, in a hyperinflationary economy, have been of unknown value at the time of export and would have had little or no effect on the price or volume of goods exported. Therefore, they argue that a benefit amount expressed in U.S. dollars clearly provided the exporters with a far more certain knowledge of the true "value" of the benefit, because U.S. dollars hold their value, than if the benefit had originally been expressed in TL because of high inflation in Turkey.

The petitioners argue that, on the date of export, the exporters knew only the U.S. dollar-denominated amount that would be used to calculate the TL benefit at some uncertain future date, and that the participants were not assured that they would ultimately receive the equivalent of the U.S. dollar-denominated amount in TL. Instead, the conversion of the benefit into a TL amount was accomplished using an exchange rate that was not contemporaneous with either the date of export or the date of payment. Between the exchange rate date and the date of payment, the real benefit eroded from hyperinflation. As a result, the amount the exporters received was not the TL equivalent of the dollar-denominated benefit. The petitioners further argue that, in fact, the Borusan Group and Mannesmann did not ultimately receive a benefit of $30/$50 per ton. At the time of payment, the lira-denominated benefit was worth no more than $17.10/$28.50, respectively.

The petitioners also claim that none of the cases cited by the respondents argues for a different result from that in the preliminary determination or the Department's decision in *Pipe and Tube and Line Pipe 1995*. The petitioners point to the *Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 1268, 1273 (January 10, 1986) *(Final Affirmative 1986)* (wherein the Department enunciated its general rule for assessing benefits on an "as earned" basis where the benefit rebates a fixed proportion of the value of the shipment and is known to the exporter), noting that the rationale for countervailing amounts received applies when the recipient could not anticipate precisely how much would be received and hence could not make business decisions based upon benefits received at a future date. Thus, they argue that the Department's position in the *Final Affirmative 1986* is consistent with its treatment of the Freight Program in this review because the exporters did not know and could not have known precisely the amount of the benefit at the time of export.

Moreover, all the other cases cited by the respondents, the petitioners argue, did not deal with hyperinflationary economies. *See Certain Iron-Metal Castings from India (Indian Castings)*, 60 FR 44843 (August 29, 1995); *Cotton Shop Towels from Pakistan (Shop Towels)*, 61 FR 50273, 50275 (September 25, 1996), (rebates earned on a shipment-by-shipment basis upon export with no diminution of value due to hyperinflation). *See also, Carbon Steel Butt-Weld Pipe Fittings from Thailand (Butt-Weld Pipe Fittings)*, 55 FR 1695 (January 18, 1990) (benefits under the Tax Certificates for Exports program assessed on "as earned" because the benefits were payable on a fixed percentage of the f.o.b. value of export); *Certain Carbon Steel Products from Brazil*, 49 FR 17988 (April 26, 1984). However, the petitioners argue that in a hyperinflationary economy, a delay in receiving payment can render the amount of the eventual benefit uncertain, unless it is tied to a stable currency.

Department's Position: As we have already stated in *Pipe and Tube and Line Pipe 1995*, it is the Department's long-standing practice to countervail an export subsidy on the date of export on an "earned basis" rather than on the date the benefit is received where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis, and the exact amount of the countervailable subsidy is known at the time of export. Contrary to the respondents' assertions, we have not departed from our practice. In *Pipe and Tube and Line Pipe 1995* at 16785, and in these preliminary results, we stated that although the benefit under the Freight Program is calculated based on export tonnage and not as a percent of the f.o.b. value, it is possible that the value of a benefit determined by tonnage could be known at the time of export and, thus, the countervailable benefit could be earned upon exportation. However, as we previously determined in *Pipe and Tube and Line Pipe 1995*, and as the facts in these reviews establish, with regard to the Freight Program, the exporter did not know the amount of the benefit at the time of export. The benefits under the Freight Program were stated in U.S. dollars per ton at the time of export, and were converted to TLs when they were paid at a later date. Because the GRT did not commit to use the exchange rate prevailing on the day the payment was made, as in the Export Performance Credit Program, the exporter could not have known the value of the benefit at the time of export, neither in U.S. dollars nor in TLs. In fact, the GRT announced in February 1995, two months after the shipments took place, that it would convert the dollar amount of the freight benefits using the exchange rate that was in effect on the last day in December 1994. Thus, the exporter ultimately received in 1996 an amount in TLs that did not correspond to the U.S. dollar value of the benefit granted by the government in 1994 at the time of shipment; under the circumstances, it is also obvious that, at the time of shipment, the exporter was in no position to predict what the amount of the final payment would be. *See Pipe and Tube and Line Pipe 1995* at 43991. Indeed, the respondents concede that "[h]ad the benefit been denominated in TL, the value of the ultimate benefit received, as measured in constant TL, would not have been known at the time of export due to the high inflation in Turkey at the time." Case *Brief* p. 7–8.

Contrary to the respondents' argument that the Freight Program is indistinguishable from the Export Performance Credit Program, we found that the programs are distinguishable. Under the Export Performance Credit Program, the value of the benefit was tied to the U.S. dollar. Exporters would receive a percentage of the U.S. dollar value of their exports in TLs based on the foreign exchange rate prevailing at the time of payment. Thus, although at the time of receipt the exporters received more TL than they would have been paid upon exportation, because the benefit was tied to the U.S. dollar, the value of the TL amount remained the same in U.S. dollar terms. However, under the Freight Program, the GRT converted the U.S. dollar value in TL using an exchange rate that did not reflect the full U.S. dollar value of the benefit at the time of payment. Therefore, we have determined that in the case of the Export Performance Program, the value of the benefit was known at the time of export, and therefore can be calculated on an "as earned" basis, but in the case of the Freight Program, the value of the benefit was not known at the point of export because the exporters did not know the exchange rate that the GRT would use to convert the U.S. dollar benefit into TLs. As such, for the Freight Program, the calculation must be based on an "as received" basis.

As petitioners point out, the cases cited accord with the Department's measurement of the benefits for the Freight Program. In *Shop Towels* and in *Indian Castings*, export rebates were earned on a shipment-by-shipment basis, and the exact amount of the rebate was known at the time of export because the rebate was set as a percentage of the f.o.b. value of the exported merchandise. *See also, Butt-Weld Pipe Fittings; Certain Textile Mill Products and Apparel from Colombia; Certain Textile Mill Products from Thailand; Certain Carbon Steel Products from Brazil*. Further, in *Paint Filters and Strainers from Brazil*, 52 FR 19184 (May 21, 1987) (*Paint Filters*), the Department did not countervail the benefit from the IPI export credit premium program because we found that the program was terminated prior to the initiation of that case, and companies could no longer receive benefits after the date of termination. We did make a statement in *Paint Filters* that, the Department had consistently calculated the benefit under the IPI export credit premium program in prior cases based on the date the premium was earned. However, as noted in *Certain Carbon Steel Products from Brazil*, the IPI export credit premium was based on the f.o.b. value of the exported merchandise, and the amount of the benefit was known at the time of export.

Comment 2: Policy Considerations for Measurement of Benefits

The respondents argue that policy considerations dictate that the Freight Program should be countervailed based on the date the benefit was earned because benefits should be countervailed when they will have the greatest potential effect on a company's export volumes or pricing to the United States. Since, they argue, the countervailing duty law is intended to offset export subsidies, it makes no sense to now countervail benefits under the Freight Program, which was terminated at the end of 1994, because there were no longer any incentives for companies to export during the period of review.

In proffering this policy argument, the respondents claim that, because the benefits under the Freight Program were intended to offset freight charges incurred on export shipments, the benefit should only be countervailable on the date of export because the freight charges were payable immediately after the goods were exported. In support, the respondents point to section 351.514(b) of the *Countervailing Duties: Notice of Proposed Rulemaking*, 62 FR 8818 (February 26, 1997) (Department's proposed regulations), which deals with freight charges. The respondents argue that under this proposed regulation, the Department will consider the benefit to have been received as of the date on which the firm pays or, in the absence of payment, was due to pay the

transport or freight charges. Therefore, because section 351.514(b) countervails freight benefits when they are actually incurred, they argue that the Freight Program benefits should be countervailed on the date the freight charges were incurred, and not when the reimbursements for these charges were later received.

The petitioners counter that it is incorrect for the respondents to suggest that there is any support for their position in section 351.514(b) of the Department's proposed regulations. Section 351.514 corresponds to paragraph (c) of the Illustrative List of Export Subsidies (Illustrative List), annexed to the Agreement on Subsidies and Countervailing Measures and deals with preferential internal transport and freight charges on export shipments. The petitioners argue that neither subsection (c) of the Illustrative List nor section 351.514 can apply to the Freight Program, because the Turkish Freight Program does not involve the provision of internal transport at preferential rates. Rather, petitioners claim that the Freight Program provides a bounty, which may lower the exporter's costs, but the actual freight charge payable is not altered. They claim that where the benefit consists of providing freight at preferential rates, the exporter reaps the benefit at the time of shipment. Therefore, it makes sense to assess duties on the basis of shipment when there is a simultaneous discount in a fixed amount. However, it is another matter to provide a bounty of an indeterminate amount at some later time, particularly in a hyperinflationary economy.

Department's Position: We disagree with the respondents' argument that, as a matter of policy, the Department should countervail benefits under the Freight Program on the date of export because benefits should be countervailed when they have the greatest potential to affect the exporters' volume and pricing decisions. The countervailing duty law does not examine when benefits will have the greatest potential effect on exports to the United States. Pursuant to section 771(5)(C), "the administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists * * *." Moreover, under the Act, a benefit that is contingent upon export is an export subsidy and, thus, countervailable. *See* section 771(5A)(B). Therefore, in accordance with section 771(5A)(B), we found the Freight Program to be a countervailable export subsidy because the benefit is contingent upon export performance, regardless of whether we measure the benefit on an earned or received basis.

Moreover, we disagree with the respondents' argument that once a program is terminated, benefits received thereafter should not, as a matter of policy, be countervailed because the effect of such benefits on the exporters' decision to export has passed. Under the logic of the respondents' argument, the Department would never be able to countervail export subsidies unless the benefit from such subsidies could be measured at the time of shipment. Clearly this proposal conflicts with the statute and our long-standing practice. Our standard methodology is to countervail subsidies at the time the subsidy affects the cash flow of the company. *See, e.g., Ferrochrome from South Africa; Final Results of Countervailing Duty Administrative Review*, 56 FR 33254, 33255 (July 19, 1991). Generally, that can only be determined when the subsidy is paid or received by the company. The only exception to this general proposition has been when export subsidies are paid as a percentage of the f.o.b. value of the exported merchandise. *See* the Department's Position on *Comment 1*. Only in these situations does the company know with precision at all times what the benefit from the subsidy is. Only under these circumstances is the Department able to determine the subsidy rate on an "as earned" basis.

Because the respondents received benefits during the period of review, we have properly included these benefit amounts in our subsidy calculations. The fact that the program was terminated prior to the period of review is not material. It is the Department's practice to countervail residual benefits from a terminated program. *See, e.g., Live Swine from Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Order in Part, 61 FR 26879, 26889 (May 29, 1996) and Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408 (October 7, 1996); *Pipe and Tube and Line Pipe 1995* at 43991. Furthermore, we note that, in the instant case, because the benefits were provided in cash and bonds with a two-year maturity, benefits will continue to accrue beyond this period of review.

Finally, the respondents also argue that the Department should countervail the benefits under the Freight Program on the date the freight charges for exportation were payable and not when the reimbursements for these charges were received. In support of their argument, the respondents cite to section 351.514 of the Department's proposed regulations. First, we note that the proposed regulations have not yet been finalized, and, thus, are not controlling in these reviews. However, even in citing to those proposed regulations, the respondents have erred in their interpretation. Section 351.514(b) of the Department's proposed regulations corresponds to paragraph (c) of the Illustrative List, and deals with preferential internal transport and freight charges on goods destined for export. Paragraph (a)(1) restates the general principle that a benefit exists to the extent that a firm pays less for the internal transport of goods destined for export than it would for the transport of goods destined for domestic consumption. Therefore, the financial contribution is provided when the payment for the freight charges occurs. Consequently, we would countervail the benefit at the time of payment of the reduced freight charges. As stated in the proposed regulations, "the Secretary normally will consider the benefit as having been received by the firm on the date the firm paid, or in the absence of payment, was due to pay, the charges."

The Freight Program, on the other hand, does not involve the provision of transport services at preferential rates. Rather, according to the enabling legislation, the Freight Program was a freight bonus, i.e., a benefit contingent upon export. *See, Questionnaire Response*, Volume II—Exhibit 9, dated June 30, 1997. Therefore, we continue to countervail this benefit at the time the financial contribution affects the cash flow of the company, which is when the company receives the payment of the subsidy to which it is entitled as a result of prior exportations.

Comment 3: Adjustment of Sales Values for Foreign Exchange Difference (Kur Farki)

The respondents argue that the Department's decision to adjust the sales value by the amount of the foreign exchange difference (kur farki account) reduced the export sales amount in the denominator, which led to an erroneous increase of the countervailable benefit for each company under review.

The respondents state that the Department specifically requested that the respondents provide total sales as booked and recorded in their accounting records, which included the sales revenue account plus the sum of the values in the kur farki account. This accounting practice is consistent with the standardized Turkish accounting principles. They state that the Department's explanation for deducting

the foreign exchange difference from the sales value is based on a fundamental misunderstanding of what the kur farki account actually represents. They argue that it does not represent an inflation adjustment, but actual revenue earned on export sales. They claim that the Department incorrectly assumes that the benefits initially denominated in dollars are received precisely on the date of export and are converted to TL on that date, whereas the income from the sale is converted at a later date and is therefore "inflation adjusted." Specifically, they claim that the kur farki account reflects the difference between the estimated TL amount recorded on the invoice date, when the sale is booked, and the TL amount actually received upon receipt of payment from the customer. Depending on the date that the payment is received, the exchange difference can increase or decrease the invoice value. Therefore, the total amount in the kur farki account and the sale revenues account represents total actual income received from export sales transactions.

Finally, the respondents argue that if the Department insists on reducing the total export value by the foreign exchange difference, then it must compute and deduct from the numerator (the countervailable benefit) the foreign exchange difference included in the benefit calculated from the date of exportation generating the benefit until the date the benefit was converted to TL. The respondents conclude that such an adjustment would more than offset the adjustment to the denominator.

The petitioners counter that the issue is not whether the foreign exchange difference amounts are actual revenue; the issue is how to treat an adjustment that is made solely to reflect differences in the relative value of currencies over time in a highly inflationary economy. The initial invoice price represents the true price in terms of the currency as it was valued on the date of the invoice, while the foreign exchange difference represents the true price in terms of the currency as it was valued on a different date. Both prices are "actual" prices but are expressed in currencies having different values. Thus, they argue that the Department would not wish to use dollar-denominated benefits in the numerator and lira-denominated benefits in the denominator, it also cannot allow the differing values of the TL over time to distort the results of its calculations.

Department's Position: The same arguments were discussed in the prior review. Although there was further explanation of the accounting system in this review, basically, the facts are the same and our position remains unchanged. *See Pipe and Tube and Line Pipe 1995.* We do not agree with the respondents that the amounts in their kur farki account are actual sales revenue. When the exporter makes a sale, the invoice amount in TL is recorded in the company's sales ledger. Payment of the invoice is subsequently received in U.S. dollars which are converted into TL based on the exchange rate prevailing on that date. Any difference between the invoice amount in TL and the actual payment in TL is recorded in the kur farki account. Therefore, we conclude that the adjustment recorded in the kur farki account is income derived from fluctuations of the relative value of the dollar versus the TL, rather than additional sales revenue, as respondents claim.

Such foreign exchange difference becomes particularly significant in Turkey's highly inflationary economy. As such, it is inappropriate to include it in the denominator. We understand that the amounts in the kur farki account are included in the companies' total revenue figures, in accordance with Turkey's generally accepted principles. However, although the amounts recorded in the kur farki account may be included in the companies' income statement as part of the total revenue figure for tax purposes, this does not detract from our finding. See Price Waterhouse, Doing Business in Turkey, Chapter 11 (1992) (lack of clearly defined commercial accounting principles and the predominance of tax law mean that Turkish law should be treated with extreme caution, and international accounting standards are preferred). Therefore, it is proper for the Department to exclude the amounts in the kur farki account from the sales figures (denominators).

We also disagree with the respondents' argument that the Department must compute and deduct from the numerator the foreign exchange difference included in the benefit calculated from the date of export until the benefit was converted to TL. As discussed in the Department's Position on *Comment 1*, the countervailable benefit under the Freight Program is the actual amount of TL measured at the time of receipt. Therefore, benefits from this program in the numerator reflect the TL received at that time. For these reasons, the Department's position remains unchanged from the preliminary results.

Comment 4: Adjustments of the Freight Program Denominator

The respondents contend that the Department made a clerical error in calculating the denominator used to determine benefits received by the Borusan Group under the Freight Program. The respondents also argue that, if the Department continues to incorrectly adjust the sales values by the foreign exchange difference, then the Department must correct a clerical error it made in calculating the "adjusted" value of Mannesmann's total exports of the subject merchandise to the United States. The respondents state that Mannesmann reported a negative foreign exchange difference in connection with export sales of the subject merchandise to the United States, and because the value is negative, they argue that the Department should have added the negative foreign exchange difference to the original sales value rather than subtracting it.

The petitioners claim that the "error" in calculating Mannesmann's denominator could not have been ministerial unless the Department was clearly informed previously that a negative amount in the "kur farki" account was intended to reflect the fact that Mannesmann received payment from the customer prior to the date that the invoice was issued. The sole source cited by Mannesmann for this alleged factual information is a letter submitted to the Department on November 20, 1997, one month after the deadline for submissions of factual information. Therefore, the petitioners argue that because Mannesmann's factual information is untimely, the Department should not consider it in its final results.

Department's Position: We agree with the respondents that a clerical error was made in calculating the benefit to the Borusan Group from the Freight Program. In calculating the "adjusted" denominator, the Department did make a typographical error. We have now corrected the error and calculated a benefit of 2.43 percent ad valorem for the Borusan Group.

We also agree with the respondents that we incorrectly calculated the denominator for total exports of the subject merchandise to the United States for Mannesmann. In instances where the foreign exchange difference was a positive amount it was deducted, therefore, in instances where the foreign exchange difference is denoted as a negative amount, which was the case for Mannesmann, the amount should be added back to the total sales figure. *See Pipe and Tube and Line Pipe 1995.* We

disagree with the petitioners that the respondents' comment is an untimely submission of factual information. The calculations were based on information that was requested by the Department. We have now corrected the calculation and obtained a net countervailable subsidy under the Freight Program of 3.28 percent ad valorem for Mannesmann.

Final Results of Reviews

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy to be as follows:

Manufacturer/exporter of pipe and tube	Rate (percent)
Borusan Group	3.10
Mannesmann	3.73

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of each class or kind of merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Reviews,* 53 FR 9791. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a 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 355.34(d). Timely written 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.

These administrative reviews are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–10168 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040998C]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1140, 1141, and 1143). Issuance of scientific research permits (1067, 1069, 1081, 1093, 1112, and 1123) and modifications to scientific research permits (1025, 1027, 1039, and 1044).

SUMMARY: Notice is hereby given that the following applicants have applied in due form for permits that would authorize takes of an endangered or threatened species for scientific research purposes: Environmental Conservation Division, Northwest Fisheries Science Center , NMFS at Seattle, WA (NWFSC) (1140); Public utility District No. 2 of Grant County at Ephrata, WA (PUDGC)(1141); and the Washington State Department of Natural Resources at Olympia, WA (DNR) (1143).

Notice is also given that NMFS has issued scientific research permits that authorize takes of ESA-listed species for the purpose of scientific research and/or enhancement, subject to certain conditions set forth therein, to: NMFS, Southwest Fisheries Science Center (SWFSC) (1112); the National Fish and Wildlife Forensics Lab (NFWFL) (1123); California Department of Fish and Game, Sacramento, CA (CDFG) (1067); Rellim Redwood Co. (1069); Redwood National and State Parks, Orick, CA (RNSP) (1081); and Dr. Walter Duffy, California Cooperative Fishery Research Unit, Humboldt State University, Arcata, CA (CCFRU) (1093).

Notice is further given that NMFS issued an amendment to a permit to the U.S. Fish and Wildlife Service (FWS) (1027) and modifications to permits to: Natural Resources Management Corp., Eureka, CA (NRMC) (1039); and NMFS, SWFSC (1044).

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before May 18, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1140, 1141, and 1143: Protected Resources Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 500,

Portland, OR 97232–4169 (503–230–5400).

For permits 1025, 1027, 1039, 1044, 1067, 1069, 1081, 1093, and 1112: Administrator, Southwest Region, NMFS, NOAA, 777 Sonoma Avenue Room 325, Santa Rosa, CA 95405 (707–575–6050).

For permit 1123: Office of Protected Resources, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1140, 1141, and 1143: Tom Lichatowich, Portland, OR (503–230–5438).

For permits 1025, 1027, 1039, 1044, 1067, 1069, 1081, 1093, and 1112: Thomas Hablett, Protected Resources Division, Santa Rosa, CA (707–575–6066).

For permit 1123: Terri Jordan, Endangered Species Division, Office of Protected Resources, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of these permits, modifications, and amendments, as required by the ESA, was based on a finding that such permits, modifications, and amendments: (1) Were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits, modifications, and amendments were also issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

chinook salmon (*Oncorhynchus tshawytscha*)
coho salmon (*Oncorhynchus kisutch*)
sockeye salmon (*Oncorhynchus nerka*)
steelhead trout (*Oncorhynchus mykiss*)

Applications Received

NWFSC (1140) requests a 5-year permit for a direct take of juvenile, endangered, Snake River fall chinook salmon and juvenile, threatened, southern Oregon/northern California (SONCC) coho salmon associated with a research study designed to assess the relationship between environmental variables, selected anthropogenic stresses, and bacterial and parasitic pathogens on disease-induced mortality of juvenile salmon in selected coastal estuaries in OR and WA. The results of this proposed study will benefit ESA-listed species by providing a better understanding of how environmental factors influence disease. NWFSC proposes to collect juvenile coho and chinook salmon with seines and fyke nets in the Elk and Columbia River estuaries. The fish would be lethally taken and analyzed for pathogen prevalence and intensity, chemical analyses, histopathology, and stomach contents. Incidental takes and incidental mortalities of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead; juvenile, threatened, lower Columbia River steelhead; juvenile, threatened, Snake River steelhead; juvenile, endangered, Snake River sockeye salmon; and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon are also requested.

PUDGC (1141) requests a five-year permit for an annual direct take of ESA-listed steelhead associated with enhancement and scientific research programs at Wanapum and Priest Rapids Dams located on the Columbia River. PUDGC proposes to use butterfly dip nets to remove smolts entrained within the wheelgate bulkhead gatewells, place them into a sanctuary box, and then transport them to a temporary holding tank until release. Smolts would be anesthetized, examined, measured, allowed to recover, and be released. Some would be examined for gas bubble trauma. Some ESA-listed steelhead smolts would be taken lethally as part of a hydro acoustics study. Some ESA-listed juvenile fish indirect mortalities associated with the research/enhancement activities are also requested.

DNR (1143) requests a 1-year permit for takes of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead; juvenile, threatened, lower Columbia River steelhead; and juvenile, threatened, Snake River steelhead associated with salmonid presence/absence surveys in proposed timber sale areas. The proposed stream surveys will determine the correct stream classification and place the stream in the correct Riparian Management Zones (RMZ). The correct RMZ designation will protect listed fish by requiring proper riparian buffers be left along streams. ESA-listed juvenile fish would be captured using electrofishing, netted, quickly identified without being removed from the water, and immediately released to calm water to recover. An indirect mortality of ESA-listed juvenile fish associated with the research is also requested.

To date, protective regulations for threatened Snake River steelhead and threatened lower Columbia River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened Snake River steelhead and threatened lower Columbia River steelhead. The initiation of a 30-day public comment period on these applications, including their proposed takes of threatened Snake River steelhead and threatened lower Columbia steelhead, does not presuppose the contents of the eventual protective regulations.

Permits, Amendment, and Modifications Issued

Notice was published on December 31, 1997 (62 FR 68260) that an application had been filed by CDFG (P622) for a second modification to a scientific research permit. Modification 2 to permit 1025 was issued to CDFG on March 12, 1998. Permit 1025 authorizes CDFG takes of adult and juvenile, endangered, Sacramento River winter-run chinook salmon associated with two scientific research studies. The modification provides for take of an additional 2,000 juvenile winter-run chinook and an increase in the associated, indirect mortalities of 100 fish for Study 1 at Knights Landing on the Sacramento River for the 1997/1998 season only. The purpose of the monitoring program is to evaluate the

utility of the site and various sampling protocols in determining the timing and abundance of juvenile anadromous salmonids emigrating to the Sacramento-San Joaquin Delta. Permit 1025 expires on June 30, 2001.

An amendment to the FWS enhancement permit 1027 was issued on March 13, 1998. Permit 1027 authorizes FWS takes of adult and juvenile, endangered, Sacramento River winter-run chinook salmon associated with artificial propagation and captive broodstock programs. FWS has developed a genetic testing protocol to identify the origin of returning adults so as to prevent hybridization problems. FWS has also developed a rearing facility on the mainstem Sacramento River to avoid imprinting problems. NMFS has reviewed and approved both the genetics testing protocol and the rearing facility, and thereby, authorizes collection of ESA-listed adult winter-run chinook for broodstock. Permit 1027 expires on July 31, 2001.

Notice was published on November 17, 1997 (62 FR 61295) that an application had been filed by NRMC for a modification to a scientific research permit. Modification 1 to permit 1039 was issued to NRMC on March 26, 1998. Permit 1039 authorizes takes of adult and juvenile, threatened, central California coast (CCC) coho salmon associated with fish population and habitat studies through out the ESU. ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. The modification authorizes takes of juvenile, threatened, SONCC coho salmon associated with fish population and habitat studies throughout the California portion of the ESU. ESA-listed juvenile fish are proposed to be observed and counted. Modification 1 is valid for the duration of the permit which expires on June 30, 2002.

Notice was published on November 28, 1997 (62 FR 63317) that an application had been filed by SWFSC for a modification to a scientific research permit. Modification 1 to permit 1044 was issued to SWFSC on April 1, 1998. Permit 1044 authorizes takes of adult and juvenile, threatened, CCC coho salmon associated with fish population and habitat studies throughout the ESU. ESA-listed fish will be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. The modification authorizes takes of adult and juvenile, threatened, SONCC coho salmon associated with fish population and habitat studies throughout the ESU. ESA-listed fish will be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also requested. Modification 1 is valid for the duration of the permit which expires on June 30, 2002.

Notice was published on September 24, 1997 (62 FR 49960) that an application had been filed by CDFG for a scientific research permit. Permit 1067 was issued to CDFG on March 25, 1998. Permit 1067 authorizes CDFG takes of adult and juvenile, threatened, CCC coho salmon associated with fishery studies in drainages throughout the ESU. ESA-listed juvenile fish are authorized to be observed or captured, handled, and released. ESA-listed juvenile fish indirect mortalities are also authorized. CDFG is authorized takes of juvenile, threatened, SONCC coho salmon using electroshocker methods associated with fishery studies in California drainages throughout the ESU. ESA-listed juvenile fish are authorized to be captured by electrofishing, handled, and released. ESA-listed juvenile fish indirect mortalities associated with the research are also authorized. Permit 1067 expires on June 30, 2002.

Notice was published on December 17, 1997 (62 FR 66053) that an application had been filed by RRC for a scientific research permit. Permit 1069 was issued to RRC on March 26, 1998. Permit 1069 authorizes RRC takes of adult and juvenile, threatened, SONNC coho salmon in California, associated with fish population and habitat studies on RRC properties within the ESU. ESA-listed juvenile fish will be captured, handled, and then be released. ESA-listed salmon indirect mortalities associated with the research are also authorized. Permit 1069 expires on June 30, 2003.

Notice was published on November 28, 1997 (62 FR 63317) that an application had been filed by NPS for a scientific research permit. Permit 1081 was issued to NPS on April 6, 1998. Permit 1081 authorizes NPS takes of adult and juvenile, threatened, SONCC coho salmon associated with fish population studies in NPS regulated drainages within the ESU in California. ESA-listed juveniles are observed or captured, handled, and released. ESA-listed salmon indirect mortalities associated with the research are also authorized. Permit 1081 expires on June 30, 2003.

Notice was published on November 28, 1997 (62 FR 63317) that an application had been filed by HFRU for a scientific research permit. Permit 1093 was issued to HFRU on April 1, 1998. Permit 1093 authorizes HFRU takes of adult and juvenile, threatened, SONCC coho salmon associated with defined fish population studies throughout the ESU in California. ESA-listed fish will be observed or captured, handled, and released. Indirect mortalities are also authorized. Permit 1093 expires on June 30, 2003.

Notice was published on December 31, 1997 (62 FR 68260) that an application had been filed by SWFSC for a scientific research permit. Permit 1112 was issued to SWFSC on March 20, 1998. Permit 1112 authorizes SWFSC to take juvenile, endangered, Sacramento River winter-run chinook salmon associated with a study to determine the interannual variability of growth, development, health, and ecology of juvenile salmonids within the San Francisco Estuary and the Gulf of the Farallones. Permit 1112 expires on June 30, 2003.

Notice was published on February 19, 1998 (63 FR 8435), that an application had been filed by NFWFL, to possess tissues (fin clips, barbels, blood, muscle, skin) of all listed, non-marine mammal, non-reptilian species under NMFS jurisdiction for purposes of conducting research. NFWFL would provide technical support to FWS and NMFS on enforcement issues pertaining to protected and endangered species. Samples would be archived for future use by Federal, state or local law enforcement agents. Permit 1123 was issued on March 26, 1998, and expires on December 31, 2003.

Dated: April 9, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–10139 Filed 4–15–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Available Surplus Buildings and Land at Military Installations Designated for Closure: Department of Defense, Housing Facility, Novato, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding surplus property that is located at the base closure site.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–

2300, telephone (703) 428–0436, or Ms. Beverly Freitas, Base Conversion Manager, Engineering Field Activity, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006, telephone (650) 244–3804.

SUPPLEMENTARY INFORMATION: In 1993, the Department of Defense, Housing Facility (DODHF), Novato, California, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, as amended. Pursuant to this designation, on December 19, 1994, the majority of the land and facilities at this installation were declared surplus to the federal government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) as amended. Notice of DODHF surplus property was published in the **Federal Register** on March 13, 1995 (60 FR 13415). This notice covered all physical locations on DODHF, with the Navy reserving 181 Capehart Housing Units, 29 Hillside Housing Units and 25 Knolls Housing Units for federal agencies (Coast Guard and Veterans Affairs). Subsequent to the screening, the Coast Guard submitted a revised request for property and the Veterans Affairs withdrew its request entirely. This resulted in the revision of the City of Novato's (Local Redevelopment Authority) reuse plan dated October 1995. For clarification purposes, the following described property is determined surplus: 181 Capehart Family Housing units; 29 Hillside Family Housing Units.

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended, this notice of surplus property at the DODHF, Novato, California, is published in the **Federal Register.**

Dated: April 8, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–10113 Filed 4–15–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive License; MSE Technology Applications, Incorporated

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to MSE Technology Applications, Incorporated a revocable, nonassignable, exclusive license in the United States to practice the Government owned inventions described in:

U.S. Patent Number 5,025,849 entitled *Centrifugal Casting of Composites.*

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 15, 1998.

ADDRESSES: Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Boulevard, West Bethesda MD 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Boulevard, West Bethesda MD 20817–5700, telephone (301) 227–4299.

Dated: April 6, 1998.

Lou Rae Langevin,

LT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 98–10132 Filed 4–15–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Clean Cities Program

AGENCY: Golden Field Office, Department of Energy.

ACTION: Notice of Solicitation for Financial Assistance Applications Number DE–PS36–98GO10295.

SUMMARY: Through this solicitation, DOE is supporting private and/or public sector efforts to improve the organizational and business practices of local Clean Cities coalitions organized to achieve the Energy Policy Act of 1992 (EPAct) objectives for accelerating the use of alternative fuels.

To carry the EPAct initiative forward, DOE's Clean Cities program has encouraged the formation of public and private sector coalitions in major metropolitan areas throughout the U.S. for the purposes of working together cooperatively to expand rapidly both production and utilization of AFVs and development of the necessary refueling infrastructure to support such vehicle use.

The objective of this scope of work is to incorporate a collection of information, communication, planning and training tools in order to best support and assist ongoing local Clean Cities coalition efforts to be effective organizations in building new markets for alternative fuels and alternative fuel vehicles. The services provided by this cooperative agreement award will assist local Clean Cities in achieving the objectives they established through Memoranda of Understanding with local partners in each community and DOE.

DATES: The solicitation will be issued on or about April 17, 1998.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, submit a written request to the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO, 80401, Attention: Mr. John Golovach, Contract Specialist. For convenience, requests for the Solicitation may be faxed to Mr. Golovach at (303) 275–4753. The Solicitation can also be accessed via the internet at the following address: http://www.eren.doe.gov/golden/solicit.htm. A list of requestors of the solicitation will also be published and may be obtained electronically through the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm.

SUPPLEMENTARY INFORMATION: EPAct was enacted to improve energy security and urban air quality. The Clean Cities program was initiated by DOE for the purposes of fulfilling voluntary commitment provisions, Section 505 of EPAct, in order to accelerate the public and private sector use of alternative fuel vehicles (AFVs). The Clean Cities program is a growing national network of local coalitions that are dependent upon an integrated information and training system to remain effective. The scope of the Clean Cities Program will require expertise in the following exemplary areas of support: (a) Alternative fuels and alternative fuel vehicles; (b) Alternative fuels and air quality legislation and regulations; (c) Knowledge of key members of industry; (d) Intergovernmental organizations; (e) Training and curricula development and materials; (f) Marketing, advertising, and public outreach; (g) Organizational planning; and (h) Meetings and workshop facilitation. Through this solicitation, the Department of Energy seeks to support local Clean Cities partnerships in the following three general areas of interest: (1) Training and Outreach to Local Clean Cities; (2) Public Outreach; and (3) Alternative Fuel Market Development.

1. Training and Outreach to Local Clean Cities

Prepare training curricula, materials and conduct up to six educational workshops in order to strengthen organizational effectiveness of local Clean Cities coalitions. Provide prepared materials (slides and/or videos, talking points, handouts) in a fashion that would enable clean cities coordinators to make condensed presentations (during local meetings) on a particular training subject. In essence, this "train the trainer approach" would enable more coalition members the opportunity to participate and learn about a subject or idea. Training programs in the following topics are desired:

A. Financing Vehicle Purchasing, Infrastructure Development and Organizational Operations

Work will focus on educating and training coalitions on techniques for: financing and raising funds, such as seeking funding from foundations and corporations; incorporating as a nonprofit; grant writing; event planning; applying for and participating in Congestion Mitigation Air Quality programs.

B. Community Organization Outreach

Work will focus on educating and training coalitions to identify and develop partnerships with pertinent local, community organizations, such as the Lion's Club, Sierra Club, parent/teacher associations, American Lung Association, etc., in order to integrate alternative fuels' initiatives into local community agendas.

C. Public Information Outreach

Work will improve coalitions' ability to communicate and present information to showcase local alternative fuel achievements. Work will also include assisting Coalitions to develop public information and outreach strategies.

D. Building Organizational Capability

Work will include training coalitions on how to increase the organizational capability of local coalitions by explaining how to establish senior executive and intern programs and motivating volunteers to conduct coalition activities.

E. Strategic Market Development

Work will be directed toward assisting local coalitions with establishing strategic market development plans that identify available resources—people, participating company affiliations, vehicles, refueling stations, corridors, airports, local laws and incentives; and then identify gaps to form action plans that will result in Alternative Fuel Vehicle (AFV) markets.

2. Public Outreach

Develop and design information materials to educate the public about Alternative Fuels and other advanced transportation technologies. Work would utilize a variety of electronic and print formats to develop a coordinated, comprehensive public information strategy in conjunction with DOE regional efforts. Work guidelines would be developed in conjunction with the DOE Public Affairs Office in order to maximize benefit and avoid duplication.

A. Outreach Program

Work would include developing and placing magazine articles to increase fleet operators', fleet owners', and general public interest in Clean Cities and alternative fuels. Work could include the development of case studies and general public information products.

B. Partner Awards

Work would include developing an award and recognition process that would generate corporate attention to Clean Cities objectives. Awards and recognition would be communicated utilizing tools developed in (A) above.

C. Public Service Announcements

Work would include developing appropriate themes on the societal benefits of driving low emission, alternative fuel, and fuel efficient vehicles; creating public service announcements based on these themes for print and broadcast media; and placing these public service announcements in the appropriate publications and broadcast media.

D. Middle and High School AFV Curricula

Work will be to develop and distribute new and/or build upon existing educational materials on the value and benefits of alternative fuel utilization, current and future AFV technology, and infrastructure for incorporation into middle and high school curricula. Training teachers on how to use the materials should be part of the task.

3. Alternative Fuel Market Development

Work would focus on developing partnerships in certain, concentrated market niches demonstrated to be "critical" in the development of a successful, local AFV market, such as airports, taxi fleets, school bus fleets, rental car, and national parks. Work would include developing an expertise in each niche; effectively "tackling" problem areas or issues in the market area; and identifying programs that can be replicated in other Clean Cities. Workshops would utilize the information materials developed. Up to two workshops per market sector will be considered.

In response to this solicitation, DOE expects to make a single award. There is a potential for additional single year extensions of this work with additional future year funds. Additional scope of work could be negotiated at a later date. Solicitation number DE–PS36–98GO10295 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about April 17, 1998, with responses due on May 19, 1998.

Issued in Golden, Colorado, on April 8, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–10077 Filed 4–15–98; 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: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, May 7, 1998, 6:00 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-level Multi-purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, 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 and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will consider approving a recommendation concerning economic reuse at the Rocky Flats Technology Site.

2. The Board will review and consider approval of comments and recommendations on the draft cleanup plan, "Accelerating Cleanup: Paths to Closure."

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 Designated Federal Official 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.

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 Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am–4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 13, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–10076 Filed 4–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1991]

City of Bonners Ferry; Notice of Authorization for Continued Project Operation

April 10, 1998.

On April 1, 1998, the City of Bonners Ferry, licensee for the Moyie River Project No. 1991, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1991 is located on the Moyie River in Boundary County, Idaho.

The license for Project No. 1991 was issued for a period ending March 31, 1998. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 1991 is issued to the City of Bonners Ferry for a period effective April 1, 1998, through March 31, 1999, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 1999, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that the City of Bonners Ferry is authorized to continue operation of the Moyie River Project No. 1991, until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10086 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–77–000]

BP Exploration and Oil, Inc.; Notice of Petition for Adjustment and Extension of Time

April 10, 1998.

Take notice that on March 23, 1998, BP Exploration and Oil, (BP), filed a petition pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA)[1] and Subpart K of the Commission's Rules of Practice and Procedure (18 CFR 385.1101–385.1117), for: (1) a 106-day extension of the Commission's March 9, 1998, refund deadline, by which date BP would otherwise be required to make Kansas ad valorem tax refunds, with interest, to ANR Pipeline Company (ANR); and (2) an adjustment with respect to BP's refund obligation, waiving BP's obligation to refund the interest that would otherwise accrue during the 106-day period from November 10, 1997 to February 24, 1998. BP's petition is on file with the Commission and open to public inspection.

On September 10, 1997, in Docket No. RP97–369–000 *et al.*, the Commission issued an order,[2] on remand from the D.C. Circuit Court of Appeals,[3] that directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission directed the pipelines to serve first sellers with a Statement of Refunds Due within 60 days of the date of the refund order, and directed first sellers to make the necessary refunds within 180 days of the date of the refund order (i.e., by March 9, 1998).

BP explains that ANR's Statement of Refunds Due identifies $227,793.83 as

[1] 15 U.S.C. § 3142(c) (1982).

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

being due from Lear Exploration, Inc. (Lear), as a result of gas sales that Lear made to ANR before December 31, 1986, and that ANR sent that Statement of Refunds Due to Lear, not BP.

BP further explains that BP America, Inc., BP's parent, acquired Lear Petroleum Corporation, Lear's parent, in 1988, and that through corporate reorganization, BP became Lear's parent company. BP adds that it sold Lear's stock to another entity in 1991, but remained responsible for the past refund obligations of Lear. BP also states that Lear sold the properties in question to Total Minatome Corporation (Total Minatome) on December 31, 1986, prior to BP America, Inc.'s acquisition of Lear's stock. BP states that Lear retained liability for refunds from sales made before the transfer to Total Minatome, and that the sales that generated the refunds were all made by Lear before the transfer to Total Minatome.

Because BP did not receive any notice of the refund obligation until after February 24, 1998, BP contends that it was not afforded the full 120-day period that the Commission intended first sellers to have, to evaluate their refund obligations. BP also points out that the refunds in question pertain to sales from properties that Lear disposed of prior to the date that BP America, Inc., acquired Lear. Therefore, BP requests a 106-day extension of the refund deadline, from March 9, 1998 to June 23, 1998.

BP also requests adjustment relief from its obligation to refund the interest that accrued on BP's outstanding balance between November 10, 1997 and February 24, 1998, on the basis that BP's response to the Commission's refund order, through no fault of its own, has been unavoidably delayed. BP argues that it would be inequitable to require BP to pay interest during the 106-day period between November 10, 1997 and February 24, 1998.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–10088 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–335–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

April 10, 1998.

Take notice that on April 6, 1998, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP98–335–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase capacity at a delivery facility authorized in blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that on January 27, 1998, it filed a prior notice, in Docket No. CP98–207–000, for a new delivery facility to be located within CIG's Kit Carson Compressor Station in Cheyenne County, Colorado. The filing was noticed on February 3, 1998 and there were no protests. The proposed delivery facility filed for on January 27, 1998, consisted of a two-inch meter run and appurtenant facilities at an estimated cost of $8,000. CIG further states that Union Pacific Fuels, Inc., has now determined they will need a four-inch meter run and appurtenant facilities with the associated increase in capacity at this location. CIG reports that the estimated cost of the revised facility would be $10,500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10089 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–334–000]

Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

April 10, 1998.

Take notice that on April 6, 1998, Midwestern Gas Transmission Company (Midwestern), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP98–334–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to upgrade a delivery point for continued service to Western Kentucky Gas Company (Western Kentucky), a local distribution company. Midwestern makes such request under its blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Midwestern request authorization to modify an existing delivery point on its system in Daviess County, Kentucky in order to deliver additional volumes at that delivery point to Western Kentucky. Midwestern proposes to uprate its existing Meter Station No. 2–7068 located at Milepost 2106–1+3.88, in order to enable Midwestern to deliver on an interruptible and firm basis up to 30 MMcf a day of natural gas at that meter station.

Specifically, Midwestern is proposing to modify the existing meter station by removing the existing 2-inch orifice meter and associated piping, 2-inch flow control valve and associated bypass and isolation valves, 3-inch check valve and approximately 45 feet of 3-inch diameter interconnecting pipe. Midwestern states that it will install an 8-inch orifice meter, 4-inch flow control valve and associated bypass and isolation valves, 8-inch check value and approximately 45 feet of 8-inch diameter interconnecting pipe. Additionally, Midwestern states that it also proposes to reconfigure the

electronic gas measurement to accommodate the above described changes.

The current capacity at that meter station is 1.5 MMcf per day, and Midwestern states that the proposed modifications are designed to increase the capacity to 30 MMcf per day, without having a significant impact on Midwestern's peak day or annual deliveries.

The overall cost of the project, including both the removal and the installation of facilities will be approximately $197,900. It is stated that Western Kentucky will fully reimburse Midwestern for this project.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10090 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–332–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

April 10, 1998.

Take notice that on April 3, 1998, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, TX 77002, filed in Docket No. CP98–332–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain facilities in Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT specifically proposes to convert an existing receipt point into a delivery point on NGT's Line 8 to deliver approximately 480 Dth/d and 8,500 Dth/yr of gas, transported pursuant to Section 284.223, to ARKLA. ARKLA will reimburse NGT for all construction costs, which are estimated to be $500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10091 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL97–11–000]

PacifiCorp; Notice Rejecting Request for Rehearing

April 10, 1998.

On February 12, 1998, the Acting Director, Office of Hydropower Licensing, issued an order finding licensing not required for a storage reservoir located on Bear Lake, in Idaho. 82 FERC ¶62,100. On March 13, 1998, LOVE Bear Lake, Inc., filed a request for rehearing of this order with the Commission.

Under Section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l*(a), a request for rehearing may be filed only by a party to the proceeding. In order to become a party to any Commission proceeding, an interested person must file a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214. LOVE Bear Lake, Inc., did not file a motion to intervene in this proceeding. Consequently, its request for rehearing must be rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10084 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92–633–001]

Public Service Company of Colorado; Notice of Request for Clarification or Amendment to Blanket Certificate

April 10, 1998.

Take notice that on April 2, 1998, Public Service Company of Colorado (PSCo), 1225 17th Street, Denver, Colorado 80202, filed in Docket No. CP92–633–001, pursuant to Rules 212 and Section 284.224 of the Commission's Rules and Regulations, a request for clarification of, or in the alternative, an application to amend the blanket certificate issued to PSCo in Docket No. CP92–633–000 by order issued October 8, 1992 (Order).[1] By its request for amendment, PSCo requests that the Commission either (1) clarify that PSCo's existing blanket certificate authorization permits PSCo to provide service using facilities located on any portion of its system in the state of Colorado, or (2) amend PSCo's existing blanket certificate authorization to permit PSCo to provide service on any portion of its system in the state of Colorado.

PSCo states that the Commission, by its Order, issued PSCo a Section 284.224 certificate in order to continue to provide service to the customers of Western Gas Supply Corporation (WestGas), a subsidiary of PSCo which held this type of certificate when a merger between PSCo and WestGas occurred. PSCo's blanket certificate application requested that the authorization pertain "to service through the former WestGas Hinshaw facilities and not PSCo's distribution facilities."

On December 23, 1997, PSCo filed an application with the Colorado Public Utilities Commission (CPUC) for authority to construct and operate the Front Range Pipeline in order to provide additional capacity on its system in Colorado. Responding to discovery

[1] 61 FERC ¶62,012 (1992).

requests in the CPUC proceeding, PSCo determined that, in providing transportation under the blanket certificate, two points on its system that were not part of the former WestGas facilities may have been used from time to time. On March 9, 1998, KN Wattenberg filed a complaint against PSCo and others which alleges, *inter alia*, that the 1992 Certificate is limited to the former WestGas Hinshaw facilities. However, PSCo believes the Commission authorized it to engage in Section 311-type transactions without limitation to any specific portions of its system.

Nevertheless, out of an abundance of caution, PSCo has restructured the current Section 311-type transactions involving the two points such that only former WestGas facilities are now used in providing the service. Since the demand by shippers for such service is expected to exceed PSCo's capacity to transport gas through only these facilities, PSCo urges the Commission to act promptly to remove the current uncertainty.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 1, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the application should be approved. 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 PSCo to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10092 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–336–000]

Texas Eastern Transmission Corporation; Notice of Application

April 10, 1998.

Take notice that on April 7, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in the above docket, an abbreviated application pursuant to Section 7(c) of the Natural Gas Act to increase the capacity of its Lebanon Lateral facility.[1] As before, Texas Eastern seeks authorization to construct, install, own, operate and maintain certain compression facilities at its existing Gas City Compressor Station located in Grant County, Indiana (Gas City) and at its existing Glen Karn meter station in Darke County, Ohio (Glen Karn), and certain other ancillary and appurtenant above-ground facilities. Such additional compression will increase Texas Eastern's capacity in the Lebanon Lateral by 302,290 Dth/d, up to a new total of 661,510 Dth/d (650 MMcf/d equivalent).

Specifically, Texas Eastern proposes to install 8,900 HP of compression at Gas City. Texas Eastern will install one reciprocating gas engine rated at 3,400 HP and one reciprocating gas engine rated at 5,500 HP. This additional compression will increase the total compression at Gas City from 3,400 HP to 12,300 HP. In addition, to accommodate the additional compressor units. Texas Eastern will expand the existing Gas City compressor buildings and install associated ancillary facilities and piping. All of the proposed facilities at Gas City will be located wholly within and on Texas Eastern's existing Gas City Compressor Station property.

Texas Eastern also proposes to install a new 8,170 HP gas turbine-driven centrifugal compressor at its existing Glen Karn meter station site. Currently there are no compression facilities located at the Glen Karn station. To house this proposed compressor unit, Texas Eastern will construct compressor station buildings and associated ancillary facilities and piping. In addition, Texas Eastern proposes to upgrade its existing metering stations at Glen Karn and at Lebanon in Warren County, Ohio.

The estimated total capital cost of the proposed facilities is approximately $31,291,000. Texas Eastern proposes to commence service utilizing the new facilities on or before November 1, 1998.

Texas Eastern also requests authorization to file a limited NGA Section 4 proceeding, after receipt of the authorizations requested and prior to the in-service date of the proposed facilities, to revise and restate the rates applicable to Texas Eastern's Part 284, open-access Rate Schedules LLFT and LLIT. Such revised and restated Rate Schedule LLFT rates result in a base Reservation Charge of $3.466 per Dth and Usage-1 rate of $0.0023, $0.1163 on a 100% load factor basis. In addition, the revised and restated Rate Schedule LLIT base rate will be $0.1163. These revised and restated rates represent a 23% reduction, on a 100% load factor basis, in the currently effective maximum Rate Schedules LLFT and LLIT rates.

Texas Eastern proposes to revise the existing fuel shrinkage percentages applicable to Rate Schedules LLFT and LLIT to recognize the fuel associated with the facilities. Texas Eastern has calculated the estimated fuel usage of the existing compression at Gas City and the proposed facilities based on historical utilization to arrive at an estimated annual fuel shrinkage percentage of 0.43%.

Texas Eastern has filed several Service Agreements with the application, each for a primary term of 10 years for a total of 110,805 Dth/d of winter service, and 66,500 Dth/d of 365-day service. Texas Eastern submits that these firm contractual commitments are in excess of 25% of the capacity that it proposes to construct, and to the extent Texas Eastern does not have firm contractual arrangements for the remaining firm capacity to be made available by the proposed facilities before construction of such facilities, Texas Eastern states that it will be "at-risk" for recovery of such costs.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 1, 1998, file with the Federal Energy Regulatory Commission, Washington,

[1] The instant docket is essentially the same project as filed in Docket No. CP97–626–000 and subsequently dismissed by the Commission, without prejudice to refiling, for lack of an adequate showing of a substantial market (see Texas Eastern Transmission Corp., 82 FERC ¶61,238) (1998).

DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and 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, necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10114 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–78–000]

Total Minatome Corporation; Notice of Petition for Adjustment

April 10, 1998.

Take notice that on March 25, 1998, Total Minatome Corporation (Total Minatome), filed a pleading that consists of:

(1) Total Minatome's response to an ANR Pipeline Company (ANR) Kansas ad valorem tax refund claim, with respect to certain sales made by Lear Petroleum Corporation (Lear Petroleum), and for which Total Minatome seeks a finding from the Commission that Total Minatome has no such refund liability; and

(2) Total Minatome's petition, in the event that the Commission finds that Total Minatome has such refund liability, for an adjustment pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) [15 U.S.C. § 3142(c) (1982)],[1] relieving Total Minatome of that refund liability.

Total Minatome's pleading is on file with the Commission and open to public inspection.

On September 10, 1997, in Docket No. RP97–369–000 *et al.*, the Commission issued an order,[2] on remand from the D.C. Circuit Court of Appeals,[3] that directed first sellers to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also directed the pipelines to serve first sellers with a Statement of Refunds Due within 60 days of the date of the refund order.

Total Minatome states that ANR mailed Total Minatome a Statement of Refunds Due that does not mention Total Minatome, but instead pertains to $81,000 in Kansas ad valorem tax reimbursements that ANR made to Lear Petroleum in 1984 and 1986.

Total Minatome states that it advised ANR that ANR's refund report had been misdirected. Total Minatome states that it also advised ANR: (1) That it acquired the subject properties after the sales had been made; (2) that, under the sales and purchase agreement for those properties, Total Minatome refused to accept responsibility for refunds due to sales made by Lear Petroleum before the closing date of the property transfers; and (3) that Total Minatome believes that Lear Petroleum was acquired by an affiliate of BP America, Inc. Total Minatome states that ANR responded, stating that Total Minatome was liable for Lear Petroleum's refund obligation, because Total Minatome acquired the properties from which the relevant sales had been made.

Total Minatome advises the Commission that it disagrees with ANR's position that Total Minatome has such refund liability, on the basis that Total Minatome made no sales to ANR to which any Kansas ad valorem tax refund obligation attaches. In view of this, if the Commission believes that such refund liability exists, Total Minatome requests that the Commission waive the refund obligation, to avoid gross inequity. Total Minatome's petition also sets forth the details of its position with respect to its disagreement with ANR.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). 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

[1] The Commission's regulations governing adjustment petitions are set forth in Subpart K of the Commission's Rules of Practice and Procedure [18 CFR §§ 385.1101–385.1117].

[2] See 80 FERC ¶ 61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F. 3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10087 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–060]

West Penn Power Company; Notice Rejecting Request for Rehearing

April 10, 1998.

Take notice that on March 2, 1998, the Acting Director, Office of Hydropower Licensing, issued an order approving a trail management plan for the Lake Lynn Project No. 2459.[1] On April 2, 1998, Friends of the Cheat Lake Trail filed a request for rehearing of that order with the Commission.

Section 313(a) of the Federal Power Act[2] requires an aggrieved party to file a request for rehearing within thirty days after the issuance of the Commission's order, in this case by April 1, 1998. Because the 30-day deadline for requesting rehearing is statutorily based, it cannot be extended and Friends of the Cheat Lake Trail's request for rehearing must be rejected as untimely.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10085 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–327–000]

Wyoming Interstate Company, Ltd. and Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

April 10, 1998.

Take notice that on April 2, 1998, Wyoming Interstate Company, Ltd. (WIC), and Colorado Interstate Gas Company (CIG) (both referred to as Applicants), both at Post Office Box 1087, Colorado Springs, Colorado 80944, filed jointly in Docket No. CP98–327–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to construct, own and operate delivery point facilities in Weld County, Colorado, to enable both pipelines to make deliveries to Public Service Company of Colorado (PSCO), under WIC's blanket certificate issued in Docket No. CP83–22 and CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Applicants propose to construct and operate separate metering facilities within the existing Cheyenne Compressor Station yard in Weld County to make deliveries from each pipeline to PSCO, a local distribution company, for its proposed Front Range Pipeline. It is stated that each delivery point would have a capacity of 255 Mmcf of natural gas per day. It is explained that the end use of the gas would be system supply for PSCO. It is asserted that Applicants have tariffs which provide for flexible receipt and delivery points and that gas delivered at the proposed facilities would be transported under existing agreements or by interruptible transportation service. It is further asserted that the proposed deliveries would have no affect on Applicants' peak day and annual deliveries. It is stated that Applicants have sufficient capacity to accomplish the deliveries without detriment or disadvantage to other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10104 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–63–000, et al.]

Bridgeport Energy LLC, et al.; Electric Rate and Corporate Regulation Filings

April 10, 1998.

Take notice that the following filings have been made with the Commission:

1. Bridgeport Energy LLC

[Docket No. EG98–63–000]

Take notice that on April 6, 1998, Bridgeport Energy LLC, c/o Duke Energy Power Services, 1077 Westheimer, Suite 975, Houston, Texas 77042, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Bridgeport Energy LLC (Bridgeport Energy) is a limited liability company organized and existing under the laws of the State of Delaware. Bridgeport Energy is developing and will own and operate a 520 MW combined cycle gas turbine generating plant in Bridgeport, Connecticut and the facilities necessary to interconnect the generating plant to the transmission grid of The United Illuminating Company (UI) (the Facility). The generating facility and necessary interconnection facilities will be eligible facilities for exempt wholesale generator purposes. The Facility will use natural gas as its fuel.

UI has separately obtained approval from the Connecticut Department of Public Utility Control (the DPUC), for the method and manner of construction of the interconnection facility through an interim order issued December 31, 1997 and for certain lease and easement arrangements related to the Facility by order issued January 28, 1998. (*See* Section II–6 below.) *See* "Application of the United Illuminating Company for Approval of Lease and Easements and Method and Manner of Construction of Transmission Line Tap at Bridgeport Harbor Station," Dkt. No. 97–11–25 (orders issued December 31, 1997 and January 28, 1998).

Bridgeport Energy is the sole owner of the Facility. The members of Bridgeport Energy are Duke Bridgeport Energy, LLC

[1] 82 FERC ¶ 62,140 (1998).

[2] 16 U.S.C. § 8251.

(Duke Bridgeport) and United Bridgeport Energy, Inc., (United). Duke Bridgeport is a wholly-owned subsidiary of Duke Energy Global Asset Development, Inc., and an indirect subsidiary of Duke Energy Corporation, an exempt utility holding company. United is an indirect wholly-owned subsidiary of UI.

Comment date: May 1, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Rochester Gas and Electric Corporation

[Docket No. ER98–2457–000]

Take notice that on April 7, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and NGE Generation, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff), accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 1, 1998, for NGE Generation Inc.'s Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER98–2477–000]

Take notice that on April 7, 1998, Tampa Electric Company (Tampa Electric), tendered for filing an addendum to various coordination rate schedules that provide for the recovery of variable costs on an incremental basis. The addendum would permit the incremental cost of sulfur dioxide emissions allowances to be included in the calculation of Tampa Electric's rates under the rate schedules.

Tampa Electric requests that the addendum be made effective on June 7, 1998, or the date the Commission accepts the addendum for filing.

Copies of the filing have been served on each party to the rate schedules affected by the addendum, and the Florida Public Service Commission.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER98–2480–000]

Take notice that on March 19, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Avista Energy, Inc., (AVISTA).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to AVISTA pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 1, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER98–1946–000]

Take notice that on April 7, 1998, Arizona Public Service Company (APS), tendered for filing an amendment to Supplement No. 1 of the Service Agreement with the Tohono O'Odham Utility Authority for service under APS' FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served on the Arizona Corporation Commission, APS' Merchant Group and Tohono O'Odham Utility Authority.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Power-Link Systems, Ltd., d/b/a First Choice Energy

[Docket No. ER98–2181–000]

Take notice that on April 7, 1998, Power-Link Systems, Ltd., d/b/a First Choice Energy (First Choice), filed amended petition to the Commission for acceptance of First Choice Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

First Choice intends to engage in wholesale electric power and energy purchases and sales as a marketer. First Choice is not in the business of generating or transmitting electric power. First Choice is not involved in any energy concern at present, is not a subsidiary of any corporation and is in no way affiliated with any other business in any utility field.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc.

[Docket No. ER98–2456–000]

Take notice that on April 7, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated April 1, 1998 with The Town of Easton by The Easton Utilities Commission (Easton) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Easton as an eligible customer under the Tariff.

PP&L requests an effective date of April 7, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Easton and to the Pennsylvania Public Utility Commission.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. The Washington Water Power Co.

[Docket No. ER98–2469–000]

Take notice that on April 7, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 a Construction Agreement between WWP and Public Utility District No. 1 of Pend Oreille County. WWP requests an effective date of June 8, 1998.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER98–2470–000]

Take notice that on April 7, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Umbrella Service Agreements with Ensearch Energy Services, Inc., Friendly Power and Public Utility District No. 1 of Clark County under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Maine Power Company

[Docket No. ER98–2471–000]

Take notice that on April 7, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Aquila Power Corporation. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER98–2472–000]

Take notice that on April 7, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Cinergy Capital & Trading, Inc. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER98–2473–000]

Take notice that on April 7, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with PG&E Energy Trading & Power, L.P. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER98–2474–000]

Take notice that on April 7, 1998, Central Vermont Public Service Corporation (CVPS), tendered for filing a Notice of Termination of FERC Rate Schedule 121, entitled "North Hartland Transmission Service Contract between Central Vermont Public Service Corporation and The Vermont Electric Generation & Transmission Cooperative, Inc." dated May 14, 1984. The notice of cancellation is requested to be permitted to become effective as of April 1, 1996. Waiver of the Commission's notice requirements is requested to allow the April 1, 1996, effective date. If waiver is not granted, the notice of cancellation is requested to be permitted to become effective sixty days after filing.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER98–2475–000]

Take notice that on April 7, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Consent to Assignment form assigning its GSS Service Agreement between LG&E and Ohio Edison Company to FirstEnergy Corporation. The GSS Agreement filed January 17, 1997 and filed with the Commission in Docket No. ER97–1284–000.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER98–2476–000]

Take notice that on April 7, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., submitted for filing an Amendment (Amendment) to the Independence Steam Electric Station Operating Agreement between Entergy Arkansas, Inc., the Arkansas Electric Cooperative Corporation, the Cities of Conway, Jonesboro, Osceola, and West Memphis, Arkansas and Entergy Power, Inc., dated July 31, 1979 (Operating Agreement). Entergy Services states that the Amendment modifies certain terms and conditions governing the service provided under the Operating Agreement.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER98–2478–000]

Take notice that on April 7, 1998, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with DTE Energy Trading, Inc.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER98–2479–000]

Take notice that on April 7, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Amoco Energy Trading Corporation (AETC).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to AETC pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 1, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER98–2481–000]

Take notice that on April 7, 1998, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and ConAgra Energy Services, Inc., (CAES).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to CAES pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of April 1, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Pacific Gas and Electric Co.

[Docket No. ER98–2482–000]

Take notice that on April 7, 1998, Pacific Gas and Electric Company

(PG&E), tendered for filing an agreement entitled "Oakland Power Plant Interconnection Special Facilities Agreement between Pacific Gas and Electric Company and Duke Energy Oakland LLC" (Special Facilities Agreement).

This Special Facilities Agreement permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities including the cost of any replacement parts and capital replacements (not upgrades or additions). As detailed in the Special Facilities Agreement, PG&E proposes to charge Duke Energy Oakland LLC (Duke) a monthly Cost of Ownership Charge equal to the rate for transmission-level, utility-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 1.14% for transmission-level, utility-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which was included in PG&E's October 23, 1996, filing in FERC Docket No. ER97–205–000 as Attachment 3. PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate for transmission-level, utility-financed Special Facilities but cap the rate at 1.25% per month.

Copies of this filing have been served upon Duke and the CPUC.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Central Louisiana Electric Company, Inc.

[Docket No. ER98–2483–000]

Take notice that on April 7, 1998, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO will provide non-firm point-to-point transmission service to Rainbow Energy Marketing Corporation under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Rainbow Energy Marketing Corporation.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER98–2484–000]

Take notice that on April 7, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Amoco Energy Trading Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Amoco Energy Trading Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER98–2485–000]

Take notice that on April 7, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Amoco Energy Trading Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Amoco Energy Trading Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10081 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–36–000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 8, 1998.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. EC98–36–000]

Take notice that on April 3, 1998, Central Maine Power Company submitted an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and Part 33 of the Commission's Regulations, 18 CFR Part 33, for authority to effect a corporate reorganization involving the formation of a holding company structure.

Comment date: May 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–000]

Take notice that on April 1, 1998, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), tendered for filing certain additional executed signature pages in order to supplement its January 15, 1998, filing in Docket No. ER98–1438.

Specifically, the Midwest ISO, for Ameren and Illinois Power Company, tenders additional signature pages for the "Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation," and a signature page for Ameren for the "Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Non-transferred Transmission Facilities." These signature pages are being tendered to reflect the fact that these parties have executed the aforementioned agreements.

Comment date: April 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, LLC

[Docket No. ER98–2293–000]

Take notice that on March 24, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of NESI Power Marketing, Inc. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

Comment date: April 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER98–2351–000]

Take notice that on March 30, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing revisions to its Transmission Owner Tariff (TO Tariff), and Cost Support for PG&E specific rates associated with the TO Tariff. PG&E requests that its filing be made effective March 31, 1998, which is the projected date the Independent System Operator (ISO) and Power Exchange (PX) are to begin operations.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. Moreover, PG&E is providing cost support for PG&E's proposed transmission access charges and PG&E is continuing to request that the Commission establish the transmission revenue requirement to be used in designating wholesale and retail transmission access charges, but that it defer to the California Public Utilities Commission (CPUC) on the allocation of costs among retail classes and the design of retail access charges based on the allocated costs.

In addition, PG&E is proposing changes to the non-rate terms and conditions of its TO Tariff in order to: (a) be consistent with the Tariff filed by the ISO; (b) comply with a Commission Order in Docket EC96–19–001, et al.; and, © make other clarifications to the TO Tariff.

Copies of this filing have been served upon the CPUC and the ISO.

Comment date: April 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–616–000]

Take notice that on April 3, 1998, Sithe Energies, Inc. (Sithe), tendered for filing with the Federal Energy Regulatory Commission Amendment No. 1 to the Transition Agreement (Amendment), entered into between Boston Edison Company and Sithe Energies, Inc., and filed with the Commission on February 17, 1998, in the above-referenced docket. Sithe states that the Amendment provides that Sithe Mystic LLC, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC and Sithe Wyman LLC will be the sellers of electric capacity, energy and ancillary services under the terms of the Transition Agreement.

Sithe requests that the tendered Amendment become effective on April 30, 1998.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–1434–000 and Docket No. ER98–1466–000]

Take notice that on April 3, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) submitted a revised amendment to its Standard Generation Service Rate Schedule to comply with the Commission directives in an order issued on March 12, 1998, in Docket No. ER98–1466–000 and ER98–1434–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Company

[Docket No. ER98–1504–000]

Take notice that on April 3, 1998, Minnesota Power & Light Company and Superior Water, Light & Power Company, as Transmission Provider, submitted for filing an amended Transmission Tariff Service Agreement with Minnesota Power & Light Company, as Transmission Customer, for a point of delivery to the City of Hibbing, MN under its Transmission Tariff Service Agreement.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Energy Clearinghouse Corporation

[Docket No. ER98–2020–000]

Take notice that on March 30, 1998, Energy Clearinghouse Corporation (ECC), petitioned the Commission for acceptance of ECC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

ECC intends to engage in wholesale electric power and energy purchases and sales as a marketer as well as selling and marketing the same at retail, aggregating and brokering. ECC is not in the business of generating or transmitting electric power. ECC is wholly-owned by Harold E. Scherz.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MEG Marketing, LLC

[Docket No. ER98–2284–000]

Take notice that on March 24, 1998, MEG Marketing, LLC (MEG), petitioned the Commission for acceptance of MEG Rate Schedule FERC No 1; the granting of certain blanket approvals, including the authority to sell electricity and natural gas at market-based rates; and the waiver of certain Commission Regulations.

MEG intends to engage in wholesale electric power and energy purchases and sales as marketer (brokering/trading). MEG is not in the business of generating or transmitting electric power. MEG is a privately-held company.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER98–2373–000]

Take notice that on April 3, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), submitted a replacement red-lined version of the Second Amendment to Interruptible Power Supply Service Agreement, previously filed pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations.

NUSCO renews its request that the rate schedule become effective on April 1, 1998. NUSCO states that copies of the replacement have been mailed to the parties to the Agreement.

Comment date: April 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. The Detroit Edison Company

[Docket No. ER98–2412–000]

Take notice that on April 3, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement)

under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), between Detroit Edison and USGen Power Services, L.P., dated as of March 30, 1998. Detroit Edison requests that the Service Agreement be made effective as of March 30, 1998.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Houston Lighting & Power Company

[Docket No. ER98–2426–000]

Take notice that on April 3, 1998, Houston Lighting & Power Company (HL&P), submitted for filing a notice of cancellation of a transmission service agreement with Duke/Louis Dreyfus, L.L.C., under HL&P's tariff for transmission service to, from and over certain HVDC Interconnections.

HL&P states that a copy of the filing has been served on the affected customer.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Indianapolis Power & Light Company

[Docket No. ER98–2427–000]

Take notice that on April 3, 1998, Indianapolis Power & Light Company (IPL), tendered for filing an interchange agreement, dated April 2, 1998, between IPL and Southern Company Energy Marketing, L.P.

Copies of this filing were served on Southern Company Energy Marketing, the Indiana Utility Regulatory Commission and the Georgia Public Service Commission.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Detroit Edison Company

[Docket No. ER98–2428–000]

Take notice that on April 3, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and USGen Power Services, L.P., dated as of March 30, 1998. Detroit Edison requests that the Service Agreement be made effective as of March 30, 1998.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Texas Utilities Electric Company

[Docket No. ER98–2429–000]

Take notice that on April 3, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing two executed transmission service agreements (TSA's), with OGE Energy Resources, Inc., and American Electric Power Service Corporation for certain Unplanned Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under the TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on OGE Energy Resources, Inc., and American Electric Power Service Corporation as well as the Public Utility Commission of Texas.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER98–2433–000]

Take notice that on April 3, 1998, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Columbia Power Marketing Corporation for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on May 1, 1998.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. The Washington Water Power Company

[Docket No. ER98–2434–000]

Take notice that on April 3, 1998, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Long-Term Firm Point-To-Point Transmission Service with Avista Energy, Inc. WWP requests that the Service Agreement be given an effective date of April 1, 1998.

Copies of this filing have been provided to the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER98–2435–000]

Take notice that on April 3, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and PacifiCorp Power Marketing, Inc., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER98–2436–000]

Take notice that on April 3, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and CNG Power Services Corporation, provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98–2437–000]

Take notice that on April 3, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service to Southern Energy Marketing Corp., Inc. (SEMC), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on April 6, 1998.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Union Electric Company

[Docket No. ER98–2439–000]

Take notice that on April 3, 1998, Union Electric Company (UE), tendered for filing a Reactivated Appendix C, IP–UE Connection 11, Second Revised Appendix C, IP–UE Connection 16 and Letter Agreement dated January 26, 1998, to the Interconnection Agreement dated February 18, 1972, between Central Illinois Public Service Company, Illinois Power (IP) and UE.

Comment date: April 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10080 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1697–000, et al.]

Long Island Lighting Company, et al.; Electric Rate and Corporate Regulation Filings

April 9, 1998.

Take notice that the following filings have been made with the Commission:

1. Long Island Lighting Company

[Docket No. ER98–1697–000]

Take notice that on April 6, 1998, Long Island Lighting Company (LILCO), filed an amendment to the Service Agreement for Firm Point-to-Point Transmission Service between LILCO and the New York Power Authority (Transmission Customer).

The amendment to the Service Agreement modifies and completes certain information delineated in the Service Agreement's Specifications for Firm Point-to-Point Transmission Service.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 1, 1998, for the amendment to the Service Agreement.

LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Aquila Power Corporation v. Entergy Services, Inc. as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc.

[Docket No. EL98–36–000]

Take notice that on March 30, 1998, Aquila Power Corporation tendered for filing a complaint against Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. (collectively Entergy). Aquila requests in its complaint that the Commission find that: (1) Entergy's reservations of transmission capacity into Entergy's system are unlawful and that Entergy must terminate such reservations; (2) order Entergy to compensate Aquila for sales of power which were lost as a results of Entergy's actions; (3) order Entergy to cease and desist from such unlawful practices; (4) suspend the market-based rate authority for Entergy and its power marketing affiliates; and (5) order any other such relief as the Commission deems necessary.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before May 11, 1998.

3. Jacksonville Electric Authority, Florida Power & Light Company, and Florida Power Corporation v. Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company

[Docket No. EL98–38–000]

Take notice that on April 3, 1998, Jacksonville Electric Authority, Florida Power & Light Company, and Florida Power Corporation (collectively Complainants), tendered for filing a Joint Complaint and Motion to Consolidate against Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern).

The Complainants urge the Commission to find that the rate of return on equity of 13.75% in certain bundled unit power sales agreements (UPS Agreements) is excessive and should be reduced. In addition, the Complainants seek to unbundle the UPS Agreements, and request that the Commission direct Southern to offer the Complainants transmission service pursuant to Southern's open access transmission tariff in order to eliminate undue discrimination and ensure that the transmission rates, terms, and conditions made available under the UPS Agreements are comparable to the rates, terms, and conditions Southern applies to itself for transmission regarding its wholesale power sales.

Comment date: May 11, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before May 11, 1998.

4. Central Illinois Light Company

[Docket No. ER98–2440–000]

Take notice that on April 6, 1998, Central Illinois Light Company (CILCO), filed with the Commission a request for approval of a Tariff granting CILCO the authority to sell electricity at market-based rates and to resell transmission rights, and the waiver of certain Commission Regulations. CILCO requested waiver of notice to permit its proposed rate schedule to become effective on May 1, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER98–2441–000]

Take notice that on April 6, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement between NUSCO and NGE Generation, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the NGE Generation, Inc.

NUSCO requests that the Service Agreement become effective April 1, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER98–2442–000]

Take notice that on April 6, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Amoco Energy Trading Corporation, Columbia Energy Power Marketing Corporation, SCANA Energy Marketing as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the this filing were served

upon Amoco Energy Trading Corporation, Columbia Energy Power Marketing Corporation, SCANA Energy Marketing and the Public Utilities Commission of Ohio.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER98–2443–000]

Take notice that on April 6, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with PacifiCorp (PacifiCorp), as Transmission Customer.

A copy of the filing was served upon PacifiCorp.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER98–2444–000]

Take notice that on April 6, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service to Columbia Power Marketing Corporation under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Columbia Power Marketing Corporation and the Arizona Corporation Commission.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2445–000]

Take notice that on April 6, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedules FERC No. 92 and FERC No. 96.

The proposed supplements supplement, No. 13 to Rate Schedule FERC No. 96, applicable to electric delivery service furnished to public customers of the New York Power Authority (NYPA), supplement No. 14 to Rate Schedule FERC No. 96, applicable to electric delivery service furnished to non-public, economic development customers of NYPA, and supplement No. 7 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the County of Westchester Public Service Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS) unbundle delivery service rates into transmission and distribution components, implement a minimum monthly charge and a charge for the supply of direct current service, provide for the phase out of 25-cycle service, and provide for potential rate adjustments effective April 1, 1999 and April 1, 2001.

These proposed supplements seek to implement terms of a settlement agreement, previously approved by the New York Public Service Commission, concerning Con Edison's rates and charges during the five year period ending March 31, 2002.

Con Edison seeks permission to make the rate increase to NYPA public customer service effective as of April 1, 1998.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER98–2446–000]

Take notice that on April 6, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with ConAgra Energy Services, Inc. (ConAgra), as Transmission Customer.

A copy of the filing was served upon ConAgra.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER98–2447–000]

Take notice that on April 6, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to Amoco Energy Trading Corporation (Amoco), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on April 7, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER98–2448–000]

Take notice that on April 6, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing, as a change in rate schedule, new supplements to the Interconnection Agreement between Northern California Power Agency and Pacific Gas and Electric Company (PG&E–NCPA IA). These supplements reflect NCPA's reservation of transmission services for 1998 and 1999. The PG&E–NCPA IA and its appendices were accepted for filing by the Commission on May 12, 1992 and designated as PG&E Rate Schedule FERC No. 142.

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER98–2449–000]

Take notice that on April 6, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Power Fuels, Inc. (PFI), as Transmission Customer.

A copy of the filing was served upon PFI.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER98–2450–000]

Take notice that on April 6, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Amoco Energy Trading Corporation (AETC), as Transmission Customer.

A copy of the filing was served upon AETC.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Central Maine Power Company

[Docket No. ER98–2451–000]

Take notice that on April 6, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Duke Louis Dreyfus. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Illinois Power Company

[Docket No. ER98–2452–000]

Take notice that on April 6, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Electric Lite Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 31, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER98–2453–000]

Take notice that on April 6, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Strategic Energy Limited will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 31, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric

[Docket No. ER98–2454–000]

Take notice that on April 6, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Market Based Service Agreement between RG&E and Columbia Power Marketing Corporation, (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 9, 1998, for Columbia Power Marketing Corporation's Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER98–2455–000]

Take notice that on April 6, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and ConAgra Energy Services Inc., (ConAgra). The Transmission Service Agreement allows ConAgra to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on ConAgra, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER98–2460–000]

Take notice that on April 6, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Amoco Energy Trading will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 1, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Florida Power Corporation

[Docket No. ER98–2461–000]

Take notice that on April 6, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to Tenaska Power Services Co. (Tenaska), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on April 7, 1998.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Energy Company

[Docket No. ER98–2462–000]

Take notice that on April 6, 1998, Consumers Energy Company (Consumers), tendered for filing an executed Service Agreement for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and a Network Operating Agreement. Both were with Lakehead Pipe Line Company, Limited Partnership and have effective dates of March 1, 1998.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the customer.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Power and Light Company

[Docket No. ER98–2463–000]

Take notice that on April 6, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing an executed Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service, establishing ConAgra Energy Services, Inc., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 31, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Power and Light

[Docket No. ER98–2464–000]

Take notice that on April 6, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing GEN SYS Energy as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 31, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Power and Light Company

[Docket No. ER98–2465–000]

Take notice that on April 6, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Illinois Power Company as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of March 16, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Power & Light Company

[Docket No. ER98–2466–000

Take notice that on April 6, 1998, Wisconsin Power & Light Company (WP&L), tendered for filing a second amendment to the Wholesale Power Contract dated January 4, 1977, between the City of Stoughton and WP&L. WP&L states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated August 9, 1989, and designated Rate Schedule No. 115 by the Commission.

The parties have amended the Wholesale Power Contract to add an additional delivery point. Service under this amended Wholesale Power Contract will be in accordance with standard WP&L Rate Schedule W–3.

WP&L requests that an effective date concurrent with the planned construction completion date be assigned.

WP&L indicates that copies of the filing have been provided to the City of Stoughton and to the Public Service Commission of Wisconsin.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Long Island Lighting Company

[Docket No. ER98–2467–000

Take notice that on April 6, 1998, Long Island Lighting Company (LILCO), filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Purchaser	Electric Power [1]
Green Mountain Power Corporation.	March 5, 1998.
Virginia Electric and Power Company.	March 7, 1998.

[1] Electric Power Service Agreement Date.

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff as reflected in LILCO's amended filing on February 6, 1998 with the Commission in Docket No. OA98–5–000. The February 6, 1998, filing essentially brings LILCO's Power Sales Umbrella Tariff in compliance with the unbundling requirements of the Commission's Order No. 888.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 16, 1998, for the Electric Power Service Agreements listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶61,081 (1993), service will be provided under an umbrella tariff and each Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service. LILCO has served copies of this filing on the customers which are a party to each of the Electric Power Service Agreements and on the New York State Public Service Commission.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Power and Light

[Docket No. ER98–2468–000

Take notice that on April 6, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing executed Form Of Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service, establishing Merchant Energy Group of the Americas, Inc., as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of April 1, 1998, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: April 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10082 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-time Information System (OASIS) and Standards of Conduct; Notice of Filing of Corrections to How Group's Oasis Phase 1A Submittal and Request for Comments

April 10, 1998.

Take notice that on April 10, 1998, the OASIS How Working Group (How Group), tendered for filing corrections to the How Group's revised OASIS Standards and Communication Protocols document submitted as part of the How Group's OASIS "Phase 1A" submittal filed on September 23, 1997.

We invite written comments on this filing on or before April 27, 1998. Any person desiring to submit comments should file an original and 14 paper copies and one copy on a computer diskette in WordPerfect 6.1 format or in ASCII format with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The comments must contain a caption that references Docket No. RM95–9–003.

Copies of this filing are on file with the Commission and are available for public inspection. The filing will also be posted on the Commission Issuance Posting System (CIPS), an electronic bulletin board and World Wide Web (at WWW.FERC.FED.US) service, that

provides access to the texts of formal documents issued by the Commission. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10083 Filed 4–15–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5997–6]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Three Reference Methods for $PM_{2.5}$

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, three new reference methods for the measurement of $PM_{2.5}$ concentrations in the ambient air.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA announces the designation of three new reference methods for measuring mass concentrations of particulate matter as $PM_{2.5}$ in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764). Each of the new reference methods is a manual monitoring method based on a particular $PM_{2.5}$ sampler. The new methods are identified as follows:

RFPS–0498–116, "BGI Incorporated Model PQ200 $PM_{2.5}$ Ambient Fine Particle Sampler," operated with software version 1.4, for 24-hour continuous sample periods, in accordance with the Model PQ200 Instruction Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix L.

RFPS–0498–117, "Rupprecht & Patashnick Company, Incorporated Partisol®–FRM Model 2000 PM–2.5 Air Sampler," operated with software version 1.102, with or without the optional insulating jacket for cold weather operation, for 24-hour continuous sample periods, in accordance with the Model 2000 Instruction Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix L.

RFPS–0498–118, "Rupprecht & Patashnick Company, Incorporated Partisol®–Plus Model 2025 PM–2.5 Sequential Air Sampler," operated with software version 1.003, for 24-hour continuous sample periods, in accordance with the Model 2025 Instruction Manual and with the requirements and sample collection filters specified in 40 CFR Part 50, Appendix L.

Applications for reference method determinations for these methods were received by the EPA on October 8, 1997 for the BGI method, and on October 7, 1997 for the Rupprecht & Patashnick methods. A notice of receipt for these applications was published in the **Federal Register** on February 10, 1998. The BGI method (RFPS–0498–116) is "conditionally" designated under the provisions of § 53.51(b)(2), which allows the applicant up to one year following designation to complete the process of obtaining ISO 9001 registration of its sampler manufacturing facility. BGI Incorporated is currently in the very final stage of that registration process. This method is available commercially from the applicant, BGI Incorporated, 58 Guinan Street, Waltham, MA 02154. The other two methods listed are available commercially from the associated applicant, Rupprecht & Patashnick Company, Incorporated (R&P), 25 Corporate Circle, Albany, NY 12203.

Test samplers representative of these methods have been tested by the respective applicants, BGI Incorporated and R&P, in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated as reference methods. The information submitted by the applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the specifications and requirements set forth in Appendix L to 40 CFR part 50, the operation or instruction manual associated with the method, and the specifications and limitations (e.g., sample period) specified in the applicable designation method description (see identification of the methods above). Use of the method should also be in general accordance with the guidance and recommendations of Quality Assurance Guidance Document 2.12, which is part of the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II (EPA/600/R–94/038b). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below for $PM_{2.5}$ methods:

(1) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(2) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(4) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or

equivalent method in accordance with part 53 and show its designated method identification number.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

(8) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler or analyzer is manufactured as an ISO 9001-registered facility.

(9) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, National Exposure Research Laboratory, Human Exposure and Atmospheric Sciences Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference methods is intended to assist the States in establishing and operating their air quality surveillance systems under part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

Dated: April 10, 1998.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–10144 Filed 4–15–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–802; FRL–5782–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–802, must be received on or before May 18, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Product Manager (PM-10), Marion Johnson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 208, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6788, e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–802] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–802] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

E.I. duPont de Nemours and Company

PP 8F4948

EPA has received a pesticide petition (PP 8F4948) from E. I. du Pont de Nemours and Company (DuPont), P.O. Box 80038, Wilmington, DE 19880–0038, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide DPX-MP062, (*R,S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate, in/on the raw agricultural commodities as follows: pome fruit at 2.0 parts per million (ppm), apple pomace at 6.0 ppm, head and stem brassicas at 10.0 ppm, cottonseed at 3.0 ppm, cotton gin trash at 15.0 ppm, leaf lettuce at 20.0 ppm, head lettuce at 7.0 ppm, fruiting vegetables at 0.70 ppm, sweet corn kernel at 0.02 ppm, sweet corn forage at 20.0 ppm, and sweet corn stover at 25.0 ppm, meat 0.02 ppm, milk at 0.10 ppm, cattle kidney at 0.05 ppm; and by establishing a tolerance for residues of the insecticide DPX-MP062, (*R,S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate and its metabolite (IN-JT333), methyl 7-chloro-2,5-dihydro-2-[[[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3*H*)-carboxylate, in/on milk fat at 0.75 ppm and cattle fat at 0.75 ppm. Three analytical enforcement methods are available for determining these plant and animal residues; they are HPLC with UV detection, GC-MSD and HPLC column-switching with UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

DPX-MP062 and DPX-JW062 are mixtures of two isomers (DPX-KN128 and IN-KN127). Only one of the isomers, DPX-KN128, has insecticidal activity. JW062 is a 50:50 mixture of the isomers. DPX-MP062 is enriched to 75:25 for the insecticidally active DPX-KN128. Registration is being sought for DPX-MP062. Some DPX-JW062 data is relevant and is being included to support the registration.

Since the insecticidal efficacy is based on the concentration of DPX-KN128, the application rates have been normalized on a DPX-KN128 basis. The proposed tolerance expression includes both DPX-KN128 and IN-KN127 and the residue method does not distinguish between the enantiomers, therefore residues are reported as the sum of DPX-KN128 combined with IN-KN127. Residues of DPX-KN128 combined with IN-KN127, whether derived from DPX-MP062 or DPX-JW062, will be referred to as "KN128/KN127".

1. *Plant metabolism.* The metabolism of DPX-MP062 in plants is adequately understood to support these tolerances. Plant metabolism studies in cotton, lettuce, grapes and tomatoes showed no significant metabolites. The only significant residue was parent compound.

2. *Analytical method.* One plant residue enforcement method detects and quantitates DPX-MP062 in cotton and sweet corn matrices by HPLC with UV detection. The other plant residue enforcement method detects and quantitates DPX-MP062 in various matrices including lettuce, tomato, pepper, cabbage, broccoli, cauliflower, apple, pear, grape, cottonseed, tomato and apple processed commodity samples by GC-MSD. The analytical method for detecting and quantitating DPX-MP062 in animal matrices including whole and skim milk, cream, fat, muscle, liver and kidney is an HPLC column-switching method using UV detection. The limit of quantitation in each method allows monitoring of crops and animal matrices with DPX-MP062 residues at or above the levels proposed in these tolerances.

3. *Magnitude of residues*—i. *Pome fruit.* The magnitude and decline of residues of KN128/KN127 were determined on apple and pear, the representative commodities of the pome fruit crop group.

ii. *Pome fruit - apple.* Residue studies were conducted with a total of 21 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with concurrent trials of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 12 test sites in New York, Pennsylvania, North Carolina, Michigan, Utah, California, Washington and Oregon. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.133 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.532 lb. a.i./acre. Applications were made approximately 7-days apart. The target PHI was 28 days. Residues of KN128/KN127 at the target PHI of 28 days ranged from 0.21 - 1.1 ppm.

In 1996, a total of 9 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 5 test sites in New York, Michigan, California, and Washington. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.133 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.532 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 4 test sites. Applications were made approximately 7-days apart. The target PHI was 28-days. Residues of KN128/KN127 for all sites at the target PHI of 28-days ranged from 0.084 - 0.89 ppm. Comparable residues of KN128/KN127 were found on apples treated with either test substance in concurrent trials.

4. *Pome fruit - apple, process fractions.* A study was conducted to determine the magnitude and concentration of KN128/KN127 in apple and its processed fractions, juice and wet pomace, following application of DPX-MP062 Experimental Insecticide. Residues were determined as the sum of the isomers and are reported as KN128/KN127. DPX-MP062 was applied as a 30% water dispersable granule in four broadcast applications at 1x and 5x the proposed maximum seasonal rate of 0.535 lb. DPX-KN128/acre. The application interval was 5-days and the pre-harvest interval was 3-days. When applied at 5x the maximum seasonal use rate, quantifiable residues KN128/KN127 were not detected in juice. KN128/KN127 concentrated in wet

pomace. The concentration factor in wet pomace was 2.6x.

5. *Pome fruit - pear.* In 1996, DPX-MP062 was applied as a 30% water dispersable granule to 6 test sites in New York, California and Washington. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.133 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.532 lb. a.i./acre. Applications were made approximately 7-days apart. The target PHI was 28-days. Residues of KN128/KN127 at the target PHI of 28 days ranged from 0.035 - 0.12 ppm. Residues of KN128/KN127 on pears were within the range of KN128/KN127 residues on apples resulting from application of DPX-MP062.

6. *Fruiting vegetables.* The magnitude and decline of residues of KN128/KN127 were determined on pepper and tomato, the representative commodities of the fruiting vegetable crop group.

7. *Fruiting vegetables- pepper.* In 1996, DPX-MP062 was applied as a 30% water dispersable granule to 9 test sites in Florida, North Carolina, Ohio, Texas and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 5-days apart. The target PHI was 3-days. Residues of KN128/KN127 at the target PHI of 3-days ranged <0.02 - 0.08 ppm in bell peppers and >0.02 - 0.10 ppm in non-bell peppers.

8. *Fruiting vegetables - tomato.* Residue studies were conducted with a total of 19 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations. In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 12 test sites in California, Florida, Maryland and Pennsylvania. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 5 days apart. The target PHI was 3-days. Residues of KN128/KN127 at the target PHI of 3-days ranged from 0.033 - 0.43 ppm.

In 1996, a total of 7 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 4 test sites in Florida, Indiana and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.27 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 3 test sites. Applications were made approximately 5-days apart. The target PHI was 3-days. Residues of KN128/KN127 for all sites at the target PHI of 3-days for all sites ranged from <0.02 - 0.16 ppm. Comparable residues of KN128/KN127 were found on tomatoes treated with either test substance in concurrent trials.

9. *Fruiting vegetables - tomato process fractions.* A study was conducted which determined the magnitude and concentration of KN128/KN127 in tomatoes and its processed fractions, puree and paste, following application of DPX-MP062 Experimental Insecticide. DPX-MP062 is a 75:25 isomer mixture which contains the isomers DPX-KN128 and IN-KN127. DPX-MP062 was applied as a 30% water dispersable granule in four broadcast applications at 1x and 5x the proposed maximum seasonal rate of 0.535 lb. DPX-KN128/acre. The application interval was 5-days and the pre-harvest interval was 3-days. When applied at 5x the maximum seasonal use rate, DPX-MP062 did not concentrate in puree and concentrated slightly in paste. Concentration factors in puree and paste were 0.5x and 1.4x respectively.

10. *Cole crops*— i. *Head and stem brassica.* The magnitude and decline of residues of KN128/KN127 were determined on broccoli and cabbage, the representative commodities of the head and stem brassica sub group of the cole crop group.

ii. *Broccoli.* Residue studies were conducted with a total of 10 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 6 test sites in Arizona, California, Oregon and Texas. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 3-days apart. The target PHI was 3-days. Residues of KN128/KN127 for all sites at the target PHI of 3-days ranged from 0.28 - 2.5 ppm .

In 1996, a total of 4 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 2 test sites in California and Texas. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 2 test sites. Applications were made approximately 3-days apart. The target PHI was 3-days. Residues of KN128/KN127 for all sites at the target PHI of 3 days ranged from 0.23 - 0.8 ppm. Comparable residues of KN128/KN127 were found on broccoli treated with either test substance in concurrent trials.

11. *Cabbage.* Residue studies were conducted with a total of 12 sites in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 6 test sites in California, Maryland, Florida, Texas, New York, and Wisconsin. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 3-days apart. The target PHI was 3-days. Residues of KN128/KN127 at the target PHI of 3-days ranged from 0.60 - 4.00 ppm (wrapper leaves attached) and <0.02 - 0.16 ppm (wrapper leaves removed).

In 1996, a total of 6 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 4 test sites in Florida, Wisconsin, and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 2 test sites. Applications were made approximately 3-days apart. The target PHI was 3-days. Residues of KN128/KN127 for all sites at the target PHI of 3-days ranged from 0.14 to 6.4 ppm (wrapper leaves attached) and <0.020 to 0.32 ppm (wrapper leaves removed). Comparable residues of KN128/KN127 were found on cabbage treated with either test substance in concurrent trials.

12. *Lettuce - head and leaf.* The magnitude and decline of residues of KN128/KN127 were determined on head and leaf lettuce. Residue studies were conducted with a total of 20 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996

were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 9 test sites in Arizona, California, Florida and Maryland. Head lettuce was grown at 5 sites, leaf lettuce at 4. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 3 days apart. The target PHI was 3 days. On head lettuce, residues of KN128/KN127 at the target PHI of 3 days ranged from 0.59 - 4.7 ppm (wrapper leaves attached) and 0.022 - 2.1 ppm (wrapper leaves removed). On leaf lettuce, residues of KN128/KN127 at the target PHI of 3 days ranged from 3.2 - 13 ppm.

In 1996, a total of 11 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 6 (4 for head lettuce and 2 for leaf lettuce) test sites in Florida, Maryland, Arizona, and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 5 test sites (3 for head lettuce and 2 for leaf lettuce). Applications were made approximately 3 days apart. The target PHI was 3 days. On head lettuce, residues of KN128/KN127 for all sites at the target PHI of 3 days ranged from 0.18 - 3.7ppm (wrapper leaves attached) and <0.02 - 0.74 ppm (wrapper leaves removed). On leaf lettuce, residues of KN128/KN127 at the target PHI of 3 days ranged from 2.8 - 7.9 ppm. Comparable residues of KN128/KN127 were found on lettuce treated with either test substance in concurrent trials.

13. *Sweet corn.* The magnitude and decline of residues of KN128/KN127 were determined on sweet corn. Residue studies were conducted with a total of 19 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 60% water dispersable granule to 9 test sites in New York, Maryland, Florida, Minnesota, Illinois, California, Oregon, and Washington. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. Applications were made approximately 3-days apart. The target PHI was 3-days for kernels plus cob with husks removed (K + CWHR) and 35-days for stover. The highest residue found in K + CWHR was 0.012 ppm. Residues of KN128/KN127 detected in 3-day forage samples ranged from 1.7 ppm to 13 ppm. Residues of KN128/KN127 detected in 35-day stover ranged from 0.86 to 20 ppm. ppm.

In 1996, a total of 10 trials were conducted with DPX-MP062 and DPX-JW062. DPX-MP062 was applied as a 30% water dispersable granule to 6 test sites in Maryland, Illinois, Minnesota, Indiana, Wisconsin, and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.067 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.268 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 4 test sites. Applications were made approximately 3- days apart. The target PHI was 3-days. No quantifiable residues were found in 3-day samples of K + CWHR. Residues of KN128/KN127 detected in 3-day forage samples for all sites ranged from 0.95 ppm to 10 ppm. Residues of KN128/KN127 detected in 35-day stover for all sites ranged from 1.5 to 13 ppm. Comparable residues of KN128/KN127 were found on sweet corn treated with either test substance in concurrent trials.

14. *Cotton.* The magnitude and decline of residues of KN128/KN127 were determined on cotton. Residue studies were conducted with a total of 19 trials in 1995 and 1996. Studies in 1995 were done with DPX-JW062. Studies in 1996 were conducted with DPX-MP062 with side-by-side comparisons of DPX-JW062 and DPX-MP062 in a number of locations.

In 1995, DPX-JW062 was applied as a 35% suspension emulsion to 8 test sites in North Carolina, Mississippi, Arkansas, Texas, Oklahoma, Arizona, and California. DPX-JW062 was applied as four broadcast applications at the maximum per application rate of 0.133 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.532 lb. a.i./acre. Applications were made approximately 5-days apart. The target PHI was 14-days. Residues of KN128/KN127 on undelinted seed cotton at the target PHI of 14-days ranged from 0.13- 1.9 ppm.

In 1996, a total of 11 trials were conducted with DPX-MP062 and DPX-JW062 DPX-MP062 was applied as a 15% suspension concentrate to 7 test sites in Georgia, Mississippi, Texas, Oklahoma and California. DPX-MP062 was applied as four broadcast applications at the maximum per application rate of 0.133 lb. DPX-KN128/acre for a maximum seasonal use rate of 0.532 lb. a.i./acre. DPX-JW062 was applied as a 60% water dispersable granule in concurrent trials at 4 test sites. Applications were made approximately 5 days apart. The target PHI was 14-days. Residues of KN128/KN127 for all sites at the target PHI of 14-days ranged from 0.033 - 1.0 ppm in undelinted seed and 2.9 - 12 ppm in cotton gin trash. Comparable residues of KN128/KN127 were found on cotton treated with either test substance in concurrent trials.

15. *Cotton - process fractions.* A study was conducted to determine the magnitude and concentration of KN128/KN127 in cotton and its processed fractions, hulls, meal, and refined oil following application of DPX-MP062 Experimental Insecticide. DPX-MP062 is a 75:25 isomer mixture which contains the isomers DPX-KN128 and IN-KN127. DPX-KN128 is the insecticidally active isomer. Residues were determined as the sum of the isomers and are reported as KN128/KN127. DPX-MP062 was applied as a 15% suspension-emulsion in four broadcast applications at 1X and 5x the proposed maximum seasonal rate of 0.535 lb. DPX-KN128/acre. The application interval was 5-days and the pre-harvest interval was 14-days. When applied at 5x the maximum seasonal use rate, KN128/KN127 did not concentrate in any process fraction and quantifiable residues were not detected in meal. Concentration factors in hulls and refined oil were 0.03X and 0.04X respectively.

16. *Livestock animal metabolism.* Animal metabolism has been studied in the rat, hen, and cow and is well understood. In contrast to crops, DPX-MP062 is extensively metabolized in animals.

17. *Poultry.* In poultry, hens were fed at 10 ppm/day for 5 days, 87-88% of the total administered dose was excreted; parent comprised 51-54% of the total dose in excreta. Concentration of residues in eggs were low, 0.3-0.4 of the total dose, as was the concentration of residues in muscle, 0.2% of the total dose. Parent and IN-JT333 were not detected in egg whites; only insecticidally inactive metabolites were identified. Parent and IN-JT333 were found in egg yolks; however, their concentrations were very low-0.01-0.02 ppm. Concentrations of parent and IN-JT333 in muscle were at or below the limit of quantitation, (LOQ) (0.01 ppm). A poultry feeding study was not conducted because finite concentrations of residues would not be expected based on the low concentration of residues in

the metabolism study and the approximate 200-fold excess under which the metabolism study was conducted compared to a proposed 1X feeding dose. Further, the only poultry feed item that could contain DPX-MP062 residues is cotton meal. In a cotton processing study run at 5X, no detectable residues of DPX-MP062 were seen. Thus no tolerances are proposed for poultry or eggs.

18. *Cattle.* For the cow study, the cattle were fed at 10 ppm/day for 5-days; approximately 20% of the total administered dose was excreted in urine and 53-60% was excreted in feces in 5-days. Four-tenths to 1.2% of the total dose in urine was parent indicating extensive metabolism; parent represented 46-68% of the fecal activity. Thus, most residues were not absorbed; those residues that were absorbed were extensively metabolized. Less than 1% of the total administered dose was in milk, most of which was parent compound. The insecticidally active metabolite IN-JT333 was not found in milk. Residues in muscle represented less than 0.01% of the total administered dose most of which was parent. IN-JT333 was not detected in muscle. No other metabolites were seen above 10% of the dose, thus only parent and IN-JT333 were monitored in the cattle feeding study.

Contribution of feed items to the cattle diet.

The Highest Average Field Trial (HAFT) value (based upon data from field residue trials for sweet corn and apples (DuPont Reports AMR 3291-95, AMR 3737-96, AMR 3292-95, and AMR 3950-96) was multiplied by a correction factor for drying, a concentration factor, if appropriate, and the percentage of the cattle diet for the feed item. The contribution to the cattle diet in ppm was then calculated:

Feed Item	HAFT	Drying Factor	Calculated Residue (ppm)	% Diet	Contribution (ppm)
Sweet corn forage	10	0.48	20.83	50	10.42
Sweet corn cannery waste	10	0.3	33.33	30	10.00
Apple pomace	2.6	0.4	6.50	20	1.30
Total					21.72

19. *Cattle feeding study.* A cattle feeding study was conducted with DPX-MP062 at doses of 7.5 ppm, 22.5 and 75 ppm which were based on preliminary residue values available at the time. Based on final residue values for the respective commodities contributing to the cattle diet, the 22.5 ppm feeding level is an appropriate feeding level from which to propose tolerances.

KN128/KN127 concentrations at the 22.5 ppm feeding level were 0.053 ppm for whole milk, 0.018 ppm for skim milk and 0.58 ppm for cream. The mean KN128/KN127 concentrations were proportional to the dosing level in whole milk, skim milk and cream. IN-JT333 concentrations at the 22.5 ppm feeding level were below the LOQ for whole milk and skim milk. The concentration of IN-JT333 in cream was 0.022 ppm. The mean IN-JT333 concentrations were proportional to the dosing level in cream.

KN128/KN127 and IN-JT333 concentrations at the 22.5 ppm feeding level were below the level of quantitation (LOQ) for all tissues, except fat (0.45 ppm, KN128/KN127 and 0.03 ppm IN-JT333) and kidney (0.017 ppm KN128/KN127), throughout 28 days of dosing. The mean KN128/KN127 residues in muscle, fat, liver, and kidney samples were proportional to the dosing level. The meanIN-JT333 residues in fat were proportional to the dosing level.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA criteria, DPX-MP062 should be classified as follows for Toxicity Categories:

Title	Test Animal	Results	Category
Oral	Rat	LD_{50}1730 mg/kg(M) LD_{50}268 mg/kg(F)	Category II
Dermal	Rat	LD_{50}>5000 mg/kg	Category IV
Inhalation	Rat	LC_{50}>5.4 mg/L (M) LC_{50} 4.2 mg/L (F)	Category IV
Eye irritation	Rabbit	Effects reversed within 72 hours.	Category III
Dermal irritation	Rabbit	No irritation	Category IV
Dermal sensitization	Guinea pig	Sensitizer	

Formulated products are slightly less acutely toxic than DPX-MP062.

DPX-MP062 exhibited acute neurotoxic effects (decreased forelimb grip strength, decreased foot splay, and some evidence of slightly reduced motor activity), but only at the highest doses tested. The NOEL was 100 mg/kg for males and 50 mg/kg for females.

2. *Genotoxicity.* DPX-MP062 has shown no genotoxic activity in the following listed *in-vitro* and *in-vivo* tests:

i. Ames— Negative

ii. *In-vitro* mammalian gene mutation (CHO/HGPRT)— Negative

iii. *In-vitro* unscheduled DNA synthesis— Negative

iv. *In-vitro* chromosomal aberration— Negative

v. *In-vivo* mouse micronucleus— Negative

3. *Reproductive and developmental toxicity.* The results of a series of studies indicated that there were no reproductive, developmental or teratogenic hazards associated with the use of DPX-MP062.

In a 2-generation rat reproduction study, the parental NOEL was 1.3 and 1.5 mg/kg/day for males and females, respectively. The parental NOEL was based on observations of reduced weight gain and food consumption for the higher concentration groups of the F0 generation and potential treatment-related changes in spleen weights for the higher groups of the F1 generation. There was no effect on mating or fertility. The NOEL for fertility and reproduction was, 6.4 and 6.9 mg/kg/day for males and females, respectively.

The fetal (developmental) NOEL was 1.3 and 1.5 mg/kg/day for males and females, respectively, and based on the reduced mean pup weights noted for the F1 litters of the higher concentration groups. The effects on pup weights occurred only at a maternal effect level and may have been due to altered growth and nutrition in the dams.

In studies conducted to evaluate developmental toxicity potential, DPX-MP062 was neither teratogenic nor uniquely toxic to the conceptus (i.e., not considered a developmental toxin). Developmental studies conducted in rats and rabbits demonstrated that the rat was more susceptible than the rabbit to the maternal and fetal effects of DPX-MP062. Developmental toxicity was observed only in the presence of maternal toxicity. The NOEL for maternal and fetal effects in rats was 2 mg/kg/day based on body weight effects and decreased food consumption at 4 mg/kg/day. The NOEL for developmental effects in fetuses was >4 mg/kg/day. In rabbits, the maternal and fetal NOELS were 500 mg/kg/day based on body weight effects (and in dams, decreased food consumption).

4. *Subchronic toxicity.* Subchronic (90-day) feeding studies were conducted with rats, mice, and dogs.

In a 90-day feeding study in rats, the NOEL was 6.01 and 2.13 mg/kg/day for males and females, respectively. In male rats, the NOEL was based on decreased body weight and nutritional parameters, mild hemolytic anemia and decreased total protein and globulin concentration. In female rats, the NOEL was based on decreased body weight and food efficiency. Female rats also had compound related mortality, clinical signs of toxicity, and mild hemolytic anemia.

In a subchronic neurotoxicity study in rats, there was no evidence of neurotoxicity at 11.9 and 6.09 mg/kg/day, the highest dose tested for males and females, respectively. The standard subchronic rat study showed equivocal evidence of neurotoxicity (i.e., ataxia and tremors) but only in moribund animals.

The subchronic NOEL in dogs (2/5 mg/kg/day, M/F) was also based on hemolytic anemia. Erythrocyte values for most dogs were within a range that would be considered normal for dogs in a clinical setting.

Mice were less sensitive to DPX-MP062 than the rats or dogs. NOELs (23/16 mg/kg/day, M/F) were based on body weight and nutritional effects, as well as clinical signs suggestive of neurotoxicity.

In a 28-day repeated dose dermal study, the NOEL was 1,000 mg/kg/day based on the hemolytic anemia observed in the 2,000 mg/kg/day group females.(being revised).

5. *Chronic toxicity.* Chronic studies with DPX-MP062 were conducted on rats, mice, and dogs to determine oncogenic potential and/or chronic toxicity of the compound. Effects generally similar to those observed in the 90-day studies were seen in the chronic studies. DPX-MP062 was not oncogenic.

The chronic NOEL in male rats was 2.4 mg/kg/day based on body weight and nutritional effects at 5 mg/kg/day and above. In females, the NOEL of 2.13 mg/kg/day was based on body weight and nutritional changes, as well as biologically significant hematologic changes at 3.6 mg/kg/day and above. Hemolytic effects were present only through the 18-month evaluation. The regenerative nature of DPX-MP062-induced hemolytic anemia was demonstrated by the absence of significant changes in indicators of circulating erythrocyte mass at the 24-month evaluation.

In mice, the chronic NOEL of 2.63 mg/kg/day for males was based on deceased body weight and weight gain effects and food efficiency at 13.8 mg/kg/day and above. The NOEL for females was 3.99 mg/kg/day based on body weight and nutritional effects, neurotoxicity, and mortality at 20.3 mg/kg/day.

In dogs, the chronic NOEL was about 1 mg/kg/day in males and females based on hemolytic effects similar to those seen in the subchronic dog study. The biological significance of changes at the next highest dose was equivocal because changes in circulating erythrocyte mass at that concentration (2.3 mg/kg/day and 2.4 mg/kg/day for males and females, respectively) were within historical control ranges and were not associated with changes in erythrocyte indices, reticulocyte counts, or platelet counts.

6. *Animal metabolism.* In rats, DPX-MP062 was readily absorbed at low dose (5 mg/kg)but saturated at the high dose (150 mg/kg). DPX-MP062 was metabolized extensively, based on very low excretion of parent compound in bile and extensive excretion of metabolized dose in the urine and feces. Some parent compound remained unabsorbed and was excreted in the feces. No parent compound was excreted in the urine. The retention and elimination of the metabolite IN-JT333 from fat appeared to be the overall rate determining process for elimination of radioactive residues from the body. Metabolites in urine were cleaved products (containing only one radiolabel),while the major metabolites in the feces retained both radiolabels. Major metabolic reactions included hydroxylation of the indanone ring, hydrolysis of the carboxylmethyl group from the amino nitrogen and the opening of the oxadiazine ring which gave rise to cleaved products. Metabolites were identified by mass spectral analysis, NMR, UV and/or by comparison to standards chemically synthesized or produced by microsomal enzymes.

7. *Metabolite toxicology.* The only metabolite of significance is IN-JT333 which is formed through animal and soil metabolism although only at levels of approximately 15% or less. Direct dietary exposure to IN-JT333 is only expected to occur as trace residues in milk fat and animal fat.

Other Potential Toxicology Considerations - Endocrine Modulation Chronic, lifespan, and multigenerational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of DPX-MP062 is negligible.

C. Aggregate Exposure

DPX-MP062 is a new insecticide with proposed uses on the commercial crops pome fruit, head & stem brassicas, sweet corn, cotton, head lettuce, leaf lettuce and fruiting vegetables. There are no residential uses.

1. *Dietary exposure.* The chronic RfD of 0.01 mg/kg bw/day is based on a NOEL of 1.1 mg/kg bw/day from the 1-year dog feeding study and an uncertainty factor of 100. The acute NOEL of 2 mg/kg bw/day is based upon weight loss seen at the 4 mg/kg bw/day level in a rat developmental study. Since it could be argued that weight loss is not an acute effect, it is likely that the acute NOEL is much higher than 2 mg/kg bw/day.

2. *Food*— i. *Chronic dietary exposure assessment.* Chronic dietary exposure resulting from the proposed use of DPX-MP062 on apples, pears, cotton, broccoli, cabbage, cauliflower, lettuce, sweet corn, peppers, and tomatoes is well within acceptable limits for all sectors of the population. The Chronic Module of the Dietary Exposure Evaluation Model (DEEM, Novigen Sciences, Inc., 1997 Version 5.21) was used to conduct the assessment with the anticipated reference dose (RfD) of 0.01 mg/kg/day. The analysis used overall mean field trial values and conservatively assumed that 30% of the crops on the proposed label would be

treated with DPX-MP062. The chronic dietary exposure to DPX-MP062 is 0.000309 mg/kg bw/day, and utilizes 3.1% of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1-6 years, is 0.000633 mg/kg/day, and utilizes 6.3% of the RfD. The table below lists the results of this analysis which indicate large margins of safety for each population subgroup and very low probability of effects resulting from chronic exposure to DPX-MP062.

Subgroup	Maximum Dietary Exposure (mg/kg/day)	%RfD
U.S. Population	0.000309	3.1
Non-Nursing Infants (<1 year old)	0.000264	2.6
Children (1-6 years)	0.000633	6.3
Females (13-50 years)	0.000248	2.5

ii. *Acute dietary exposure.* Results of the Tier 3 acute dietary exposure analysis show that an adequate margin of safety exists for all population subgroups and that no acute effects would result from dietary exposure to DPX-MP062. Margins of exposure (MOE) were calculated based on an acute NOEL of 2 mg/kg bw/day from the rat developmental study. The acute dietary exposure to DPX-MP062 is 0.002271 mg/kg bw/day, MOE = 881, for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, children age 1 - 6 years, is 0.004469 mg/kg/day, MOE = 448. The results of this analysis are given in the table below. All of the results are extremely reassuring because they are based on several very conservative assumptions and include exposure from ten crops, which collectively comprise a significant portion of the diet. Since the MOEs are above 100, the acute dietary safety of DPX-MP062 clearly meets the FQPA standard of reasonable certainty of no harm.

Subgroup	99th Percentile of Exposure		99.9th Percentile of Exposure	
	Exposure (mg/kg/day)	MOE	Exposure (mg/kg/day)	MOE
U.S. Population	0.002271	881	0.006846	292
Non-Nursing (<1 yr.)	0.002339	855	0.003937	508
Children (1-6)	0.004469	448	0.014810	135
Females (13-50 yrs.)	0.001893	1057	0.005775	346

3. *Drinking water.* DPX-MP062 is highly unlikely to contaminate groundwater resources due to its immobility in soil, low water solubility, high soil sorption, moderate soil half-life, and resulting low groundwater ubiquity score (GUS) of 0.620. Both acute and chronic drinking water exposure analyses were calculated using EPA screening models (SCI-GROW for groundwater and GENEEC for surface water). The calculated acute margin of exposure was greater than 5,000 for all subpopulations. The predicted chronic exposure for all subpopulations was 0.1% of the RfD (0.01 mg/kg/bw/d). Thus exposures to drinking water were found to be negligible.

4. *Non-dietary exposure.* DPX-MP062 products are not labeled for residential non-food uses, thereby eliminating the potential for residential exposure. Non-occupational, non-dietary exposure for DPX-MP062 has not been estimated because the proposed products are limited to commercial crop production. Therefore, the potential for non-occupational exposure is insignificant.

D. Cumulative Effects

EPA's consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of DPX-MP062 would be cumulative with those of any other chemical compounds. Oxadiazine chemistry is new, and DPX-MP062 has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population, and ample margins of safety have been demonstrated for both situations. The chronic dietary exposure to DPX-MP062 is 0.000309 mg/kg/day, which utilizes 3.1% of the RfD for the overall U.S. population, assuming 30% of the crops are treated and residues equivalent to overall mean field trial values. The MOE for acute dietary exposure to the U.S. population is 881 (99th percentile) and 292 (99.9th percentile). Using only PHED data levels A and B (those with a high level of confidence), the MOEs for occupational exposure are 5891 for mixer/loaders and 6511 for applicators. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of DPX-MP062 including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Chronic dietary exposure of the most highly exposed subgroup in the population, children age 1-6 years, is 0.000633 mg/kg/day or 6.3% of the RfD. For Infants (non-nursing, >1 yr.), the exposure accounts for 2.6% of the RfD. The MOE for acute dietary exposure for children (1-6 years) is 448 (99th percentile) and 135 (99.9th percentile). For non-nursing infants (>1 yr.), the MOE is 855 at the 99th percentile and 508 at the 99.9th percentile. There are no residential uses of DPX-MP062 and contamination of drinking water is extremely unlikely. Based on the completeness and reliability of the toxicity data, the lack of toxicological endpoints of special concern, the lack of any indication that children are more sensitive than adults to DPX-MP062, and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of DPX-MP062, including all anticipated dietary exposure and all other non-occupational exposures. Accordingly, there is no need to apply an additional safety factor for infants and children.

F. International Tolerances

To date, no international tolerances exist for DPX-MP062.

[FR Doc. 98–10150 Filed 4–15–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 10, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before [insert date 30 days after date of publication in the FEDERAL REGISTER]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060-0798.

Title: Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC 601.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; Businesses or other for profit; Not-for-profit institutions; State and Local or Tribal Government.

Number of Respondents: 240,320.

Estimated Hour Per Response: 1.25 hours per respondent. The Commission estimates 50 % of the respondents will hire a consultant to prepare the required information. The estimated time for coordinating with these consultants is 30 minutes per respondent. The estimated time for the remaining 50% of the respondents to complete the collection is 1.25 hours per response. This collection covers a wide variety of services and 1.25 represents an average time for completion.

Total Annual Burden: 210,280 hours.

Estimated Total Annual Costs: $30,340,000. This estimate includes costs incurred by 50% of the respondents hiring consultant to prepare the required information. The estimated costs for hiring these consultants is $200 per hour. This total also includes a $2.50 postage fee for the respondents not filing electronically.

Needs and Uses: FCC form 601 will be used as the general application for market based licensing and site-by site licensing in the Wireless Telecommunications SErvices. The purpose of this revisions is to include use by several more radio services, modify schedules and include additional services. This consolidated form will allow common fields, questions and statements to reside in one place and allow the technical data specificed in each service to be captured on its own form or schedule. This consolidated form will eventually replace existing forms used by WTB such as FCC 313, 313R, 402, 402R, 405, 405A, 406, 415, 464, 464A, 489, 494, 503, 452R, 574, 574R, 600 and 701.

Please note that the burden estimates in this notice differ from the estimates provided in the Notice published 63 FR 5521, February 3, 1998. The Commission is requesting clearance for services in addition to those proposed in that notice. Schedules have been added to the form to include Maritime Services (excluding ships), Aviation Services (excluding aircraft), Fixed Microwave Services, Broadcast Auxiliary Services, Private Land Mobile Radio Services, General Wireless Communications Services, Personal Communications Service, Public Mobile Services as well as the Cellular and Paging Radio Services that were published in the February notice.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–10136 Filed 4–15–98; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 21, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: this Meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 23, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This Meeting will be open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–05: American Electric Power Service Corporation by counsel, Barbara A. Belville.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–10197 Filed 4–14–98; 10:28 am]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the

Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Cargo Systems Int'l, Corp., 9550 NW 12th Street, Bay #10, Miami, FL 33172, Officers: Francisco J. Nunez, President, Angela C. Damasio, Vice President

Linda Yumi Matsuura, 2615 Plaza Del Amo #600, Torrance, CA 90503, Sole Proprietor

Dated: April 13, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–10075 Filed 4–5–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Invitation to Comment on Requested Exemption from Trade Regulation Rule.

SUMMARY: The Commission is requesting public comment with respect to a request from Navistar International Transportation Corporation for an exemption from the requirements of the Franchise Rule.

DATES: Written comments will be accepted until June 15, 1998.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: Myra Howard, Attorney, PC–H–238, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (16 CFR Part 436) ("the Rule"). In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, Room 130, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule.

Navistar International Transportation Corporation ("Navistar" or "Petitioner") has filed a petition for exemption from the Franchise rule pursuant to Section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). Navistar's petition asserts without elaboration that its dealer operations are not subject to the Franchise Rule. The information submitted in support of the petition, however, demonstrates that absent an exemption, Navistar's dealer operations fall within the scope of the Rule.[1]

Petitioner asserts that an exemption should be granted because Navistar dealers are sophisticated business persons with experience in the industry, and the information-exchange and negotiation process leading to execution of a dealership agreement takes place over a period of from four months to a year, ensuring adequate time for review. Petitioner also explains that "[b]ecause it is in Navistar's best interest to have strong, committed and well-financed dealers, Navistar encourages its dealers to become fully informed prior to making a commitment." Pet. at 11. Petitioner argues that the experience and sophistication of prospective dealers, the company's selectivity generated by its interest in ensuring that its dealers will be committed and well-financed and the extended process leading to the execution of dealership agreements make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to Navistar unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, Room 130, on request.

In assessing the present exemption request, the Commission solicits comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of truck franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concluded that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views or arguments on any issues of fact, law or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Navistar Franchise Rule Exemption Comment," and two copies should be submitted.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 98–10079 Filed 4–15–98; 8:45 am]

BILLING CODE 6750–01–M

[1] Navistar distributes goods associated with its trade name or mark (16 CFR 436.2(a)(1)(i)(A)); Navistar exerts significant control over, or gives significant assistance to, the dealer (16 CFR 436.2(a)(1)(i)(B)); and Navistar requires its dealers to pay it over $500 within six months of the commencement of the dealer's business (16 CFR 436.2(a)(3)(iii)). *See* Petition and Letter from Navistar counsel to Myra Howard, Esq., FTC, dated December 8, 1997 (available on FTC public record).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0212]

Cyanotech Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cyanotech Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of *Haematococcus* algae

meal as a color additive in salmonid fish feeds.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0256) has been filed by Cyanotech Corp., 73–4460 Queen Kaahumanu Hwy., #102, Kailua-Kona, HI 96740. The petition proposes to amend the color additive regulations to provide for the safe use of *Haematococcus* algae meal as a color additive in salmonid fish feeds.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 20, 1998.

Laura M. Tarantino,

Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–10032 Filed 4–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0226]

Nalco Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nalco Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium or dipotassium fluorescein for use in boilers where steam may contact food.

DATES: Written comments on the petitioner's environmental assessment by May 18, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paulette M. Gaynor, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3079.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7A4539) has been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60563–1168. The petition proposes to amend the food additive regulations in 21 CFR 173.310 to provide for the safe use of disodium or dipotassium fluorescein for use in boilers where steam may contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before May 18, 1998, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 26, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–10031 Filed 4–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Studies on Microbiological Hazards Associated with the Food Animal Production Environment Including Animal Feeds; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM) is announcing the availability of research funds for fiscal year (FY) 1998 to study the microbiological hazards associated with the food animal production environment which includes animal feeds. Approximately $1 million will be available in FY 1998. FDA anticipates making 6 to 12 Cooperative Agreement awards at $100,000 to $200,000 per award per year (direct and indirect costs). Support for these agreements may be for up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the projects.

DATES: Submit applications by June 1, 1998. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Park Bldg., rm. 3–40, Rockville, MD 20857, 301–443–6170. (Applications hand-carried or commercially delivered should be addressed to the Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20852.)

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: David B. Batson, Center for Veterinary Medicine (HFV–502), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–827–8021.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of funds for FY 1998 for awarding cooperative

agreements to support research studies on microbiological hazards associated with the food animal production environment which includes animal feeds. FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (the PHS act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit workplans that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (full report, stock no. 017–00100474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

I. Background

FDA is mandated to assure the microbiological safety of foods, including those derived from animals. The President's Food Safety Initiative (FSI) of 1997 calls for increased allocation of resources for research by FDA to identify and investigate microbiological hazards associated with food produced by animal agriculture. Even though the American food supply is among the safest in the world, millions of Americans are stricken by illness each year caused by the food they consume and some 9,000 a year, primarily the very young and elderly, die as a result. The goal of the FSI is to further reduce the incidence of foodborne disease to the greatest extent possible. Specifically, FSI mandates research be conducted to develop the means to: (1) Identify and characterize more rapidly and accurately foodborne hazards, (2) provide the tools for regulatory enforcement, and (3) to develop interventions that can be used as appropriate to prevent hazards at each step from production to consumption of food.

The role of FDA's CVM in this research relates to microbial hazards associated with pre-harvest phases of food animal production, including aquaculture. The FSI specifically identifies a need for research addressing the microbial ecology of the food animal production environment which includes animal feeds. This research will include: (1) Development and/or evaluation of methods for the detection of human foodborne pathogens in the animal environment and feeds; (2) investigations of factors associated with the emergence, transmission, and carriage of human foodborne pathogens in or on food-producing animals and edible products derived from them; and (3) investigations of the microbiological consequences of the use of antibiotics in the animal production environment, including selection and elaboration of antibiotic resistant pathogens and possible interactions which would create conditions for increased pathogen carriage rates.

II. Research Goals and Objectives

The specific objective of this research program will be to provide financial assistance to investigators conducting research on microbiological hazards associated with the food animal production environment, including animal feeds. It is of particular interest to FDA that this research advance scientific knowledge of human foodborne pathogens, such as salmonellae, *Escherichia coli*, and campylobacteria. Potential areas of investigation include transmission and fate in animal agriculture, antibiotic resistance development and dissemination in the animal production environment, and cultural/molecular methods evaluation/refinement for use in studying the microbiota of the animal production ecosystem.

Projects that fulfill any one or a combination of the following specific objectives will be considered for funding:

(1) Performance evaluation of the FDA Bacteriological Analytical Manual (BAM) cultural and molecular methods to identify and quanitate human foodborne pathogens in animal feeds, feed commodities, and the animal production environment, including feces, manure, and litter. Optimization of the methods found not to perform satisfactorily. Development and testing of rapid detection methods and sampling strategies for use in animal feeds and the animal production environment.

(2) Conducting surveys to establish baseline data on human foodborne pathogen content in feeds and feed commodities. Work of this type is of particular interest if it compares feed at the site of manufacture versus feed at the farm. In addition, research to investigate survival characteristics of pathogens in feeds under various manufacturing and storage conditions is of interest. Identification of species/strain differences in survival/proliferation patterns in feeds is also a topic of concern.

(3) Conducting research to investigate the fate and transmission dynamics of human foodborne pathogens, especially antibiotic resistant bacteria, after ingestion by an animal or animals or as an environmental contaminant in a herd or flock.

(4) Research associated with human foodborne pathogen identification and carriage in fish (excluding protozoans) produced in various aquaculture conditions.

(5) Research to develop background data on antibiotic resistance patterns and effects of antibiotics on human foodborne pathogen carriage rates associated with the animal production and aquaculture environments. Also investigations of the dynamic effects resulting from the introduction of specific antibiotics into animal production and aquaculture environments are of interest. Investigations of effects that antibiotic residues in the environment, including aquaculture ponds, may have on resistance development are also of interest.

III. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time will be grounds for suspension or termination of the grant. Progress reports will be required quarterly within 30 days following each Federal fiscal quarter (January 31, April 30, July 30, and October 31), except for the fourth report which will serve as the annual report and will be due 90 days after the budget expiration date. CVM program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269), Program Progress Report, and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the project officer and the project advisory group. Project monitoring may also be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the recipient organization. The results of these

monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must exclude fees or profit from their request for support. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive awards.

C. Length of Support

This agreement is planned for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and (2) the availability of Federal fiscal year appropriations.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this request for applications (RFA).

Substantive involvement includes but is not limited to the following:

(1) FDA will appoint project officers who will actively monitor the FDA supported program under each award;

(2) FDA will establish a project advisory group which will provide guidance and direction to the project officer with regard to the scientific approaches and methodology that may be used by the investigator; and

(3) FDA scientists will collaborate with the recipient and have final approval on experimental protocols. This collaboration may include protocol design, data analysis, interpretation of findings, and co-authorship of publications.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicants without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers, and the final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Review Criteria

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria or administrative procedure prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CVM contact and all questions of an administrative or financial nature must be directed to the Grants Management Officer. (See the **"For Further Information Contact"** section at the beginning of this document.) Responsiveness will be based on the following criteria:

(1) Research should be proposed on microbiological hazards research that is within one or more of the five objectives listed in section II. of this document;

(2) Whether the proposed study is within the budget and costs have been adequately justified and fully documented;

(3) Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of the RFA;

(4) Availability and adequacy of laboratory and associated animal facilities;

(5) Availability and adequacy of support services (e.g., biostatistical computer, etc.,); and

(6) Research experience, training, and competence of the principal investigator and support staff.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of Form PHS 5161(Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be hand-carried or commercially delivered to Robert L. Robins (address above). State and local governments may choose to use Form PHS 398 in lieu of Form PHS 5161. Submit applications by June 1, 1998. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the closing date.

The outside of the mailing package and item 2 of the application face page should be labeled, "Response to RFA FDA CVM–98–1".

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date.

Applications will be considered received on time if sent or mailed on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH). Any application that is sent to NIH, not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address http://www.nih.gov/grants/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/phs398/forms—toc.html). However, as noted above, applications are not to be mailed to NIH. (Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications). Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions"

and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to CSR, NIH. Applications from State and local Governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect the RFA number RFA–FDA–CVM–98–1.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by FOIA as amended as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: April 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10069 Filed 4–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–224]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

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 (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 1853(a)(3) of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement the requirements set forth in the statute.

HCFA is requesting OMB review and approval of this collection by 5/8/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, by 5/6/98.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Collection of Managed Care Data Using the Uniform Institutional Providers Form (HCFA–1450/UB–92) and Supporting Statute Section 1853(a)(3) of the Balanced Budget Act of 1997;

Form No.: HCFA–R–224;

Use: Section 1853(a)(3) of the Balanced Budget Act (BBA) requires Medicare+Choice organizations, as well as eligible organizations with risk-sharing contracts under section 1876, to submit encounter data. Data regarding inpatient hospital services are required for periods beginning on or after July 1, 1997. These data may be collected starting January 1, 1998. Other data (as the Secretary deems necessary) may be required beginning July 1, 1998.

The BBA also requires the Secretary to implement a risk adjustment methodology that accounts for variation in per capita costs based on health status. This payment method must be implemented no later than January 1, 2000. The encounter data are necessary to implement a risk adjustment methodology.

Hospital data from the period, July 1, 1997–June 30, 1998, will serve as the basis for plan-level estimates of risk adjusted payments. These estimates will be provided to plans by March, 1999. Encounter data collected from subsequent time periods will serve as the basis for actual payments to plans for CY 2000 and beyond.

In implementing the requirements of the BBA, hospitals will submit data to the managed care plan for enrollees who have a hospital discharge using the HCFA–1450 (UB–92), Uniform Institutional Provider Claim Form. Encounter data for hospital discharges occurring on or after July 1, 1997 are required. While submission from the hospital to the plan is required, plans are provided with a start-up period during which time an alternate submission route is permitted.

The six month start up period, beginning January 1, 1998 will enable plans to accomplish the requirements of the BBA by the end of the start-up period, or June 30, 1998. Special procedures have been identified to ensure that hospital encounter data are submitted for discharges occurring on or after July 1, 1997 and before June 30, 1998. The special procedures for the start up period include the following:

1. In order to provide plans with an estimate of their Average Payment Rate (APR) by March, 1999, HCFA must receive data on hospital discharges that occurred on or after July 1, 1997 and before December 31, 1997, as well as encounter data on discharges that occur during the start up period, or January 1, 1998 through June 30, 1998. Currently, most plans do not have the capacity to submit data electronically to a fiscal intermediary (FI), and the FIs are not capable of receiving these data. Therefore, during this period only, unless an alternative approach is approved by HCFA, hospitals must submit completed UB–92s for the Plan's enrollees. These pseudo-claims must be submitted to the hospital's regular fiscal intermediary. This is a current requirement for hospitals, and they are expected to comply with this requirement throughout this period. Plans must provide hospitals with the Medicare identification number of all enrollees admitted who have Medicare coverage.

If hospitals are unable to submit these data on behalf of the plan during the start-up period, an alternate method of submitting the data may be developed by HCFA. If such a method is developed, it would require the plans to submit a subset of data elements that are found on the UB–92. Possible data elements include the following: Plan Contract Number; HIC (or Medicare Identification Number); enrollee's name; enrollee's state and county of residence; enrollee's birthdate and gender; Medicare Provider Number for the Hospital; claim from and thru date; admission date; and principal and secondary diagnoses codes. HCFA will specify the data elements, submission route, and format for these data.

2. During the start up period, the plan is expected to establish an electronic data linkage to a FI to be determined by HCFA. By June 30, 1998, the Plan is expected to have completed this

linkage, including testing of the linkage, and to be capable of transmitting hospital encounter data to an FI. All data submitted after July 1, 1998 will be transmitted using this linkage. (See Attachment 1 for additional information on the transmission of data to HCFA.) Each plan and/or contract will use a single FI.

HCFA will establish a series of interim deadlines to ensure that plans are making sufficient progress toward accomplishing this linkage no later than June 30, 1998. HCFA will assist plans in initiating discussions with their FI.

After plans have established linkages to a FI, hospitals will submit HCFA–1450 (UB–92) forms to the managed care plan. The HCFA–1450 (UB92) form is identical to the one used by hospitals in billing for Medicare fee-for-service claims. After receiving the pseudo claim from the hospital, the plan attaches the plan identifier, which is the HCFA assigned managed care organization (MCO) Contract Number, and submits the pseudo-claim electronically to the fiscal intermediary (FI). The data processing flow by the FI is very similar to current claims processing for the fee-for-service system, except that no payment is authorized to the plan. Pseudo claims will flow though the FI to our Common Working File (CWF) and will be retained by HCFA;

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and Federal government;

Number of Respondents: 1.9 million;

Total Annual Responses: 1.9 million;

Total Annual Hours: 13,310.

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.

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 designee referenced below, by 5/6/98:

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 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10105 Filed 4–15–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Proposed Project: Community Mental Health Services (CMHS) Block Grant Application—Revision—The ADAMHA Reorganization Act 42 USC 300x1–9 established the Community Mental Health Services Block Grant program which authorized block grants to States to provide community based mental health services. The name of the program was changed in the Spring of 1997 to The Performance Partnership Block Grants (PPBG) for Community Mental Health Services. Under provision of the law, States may receive allotments only after an application is approved by the Secretary. Further, the Act requires States to submit to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance and an annual implementation report on the block grant fund activities for the previous year.

This block grant program is administered by SAMHSA's Center for Mental Health Services (CMHS). Through an iterative process of consultation with State mental health planners, representatives of the National Association of State Mental Health Program Directors, and the National Governors Association, CMHS revised the recommended voluntary format and content. The proposed application for FY 1999–2001 reflects the criteria, assurances, and requirements set forth in Public Law 102–321. The proposed application provides maximum flexibility to the States while providing performance measures as required by the Government Performance and Results Act. It includes a multi-year option for the State Plan, the option for consolidation of the 12 criteria for application to 5 criteria, and reduced respondent burden. Based on feedback from States that might exercise the multi-year planning option and the consolidation of the criteria, the annual burden estimates are as follows:

ESTIMATES OF ANNUALIZED BURDEN

	Number of States responding	Responses per respondent (over 3 year period)	Hours per response	Annualized response burden (hours)
State Plan:				
12 Criteria:				
1 year	7	3	210	1470
2 year	3	2	180	360
3 year	4	1	150	200
5 Criteria:				
1 year	15	3	180	2700
2 year	15	2	150	1500
3 year	15	1	110	550
Implementation Report	59	3	80	4720

ESTIMATES OF ANNUALIZED BURDEN—Continued

	Number of States responding	Responses per respondent (over 3 year period)	Hours per response	Annualized response burden (hours)
Totals	59			11,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel J. Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

Dated: April 7, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10067 Filed 4–15–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP) announce the availability of FY 1998 funds for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period
Recovery Community Support Program	06/08/98	$2.5M	20–30	3 yrs.
Methamphetamine Treatment	06/08/98	2.4M	5–7	3 yrs.
Children of Substance Abusing Parents (COSAPs)	06/08/98	8.0M	19	3 yrs.
Parenting Adolescents	06/08/98	4.3M	9–12	3 yrs.
Border CAPT	06/08/98	.60M	1	3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, February 26, 1998, March 20, 1998, and on April 8, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Public Law No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*.

(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines

The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an

address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/ Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

Table of Contents

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a "menu" of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/ SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the

appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 State, Regional and Local Recovery Network Development (Short Title: Recovery Community Support Program, GFA No. TI 98–008)

- *Application Deadline:* June 8, 1998.
- *Purpose:* The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of grants to foster the participation of recovery communities in the development of programs, policies and quality assurance activities at the State and local level. These recovery organizations may be comprised of persons in recovery from substance abuse and/or dependence, substance abuse service consumers/recipients, and their significant others and families.

CSAT is committed to funding the creation and initial support of recovery organizations that work to participate and provide input in the conceptualization, planning, implementation and evaluation of substance abuse treatment services. Such an approach will provide the recovery community a public voice to communicate their unique perspectives and insight. Recovery organizations will work to assist State and local communities to develop and disseminate strategies for enhancing systems of care, strengthening service systems infrastructure, and improving the quality and availability of substance abuse treatment services. Recovery organizations will also be encouraged to participate in the development, articulation and promotion of community substance abuse treatment philosophies. It is intended that recovery organizations funded through this program will become models of system participation and building for other communities and States.

Grant funds may be used for activities that either support the creation and maintenance of recovery communities *or* activities that further an existing recovery organization's ability to participate and provide input on service system infrastructure issues.

- *Priorities:* None.
- *Eligible Applicants:* Applications may be submitted by units of State or local government and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals.
- *Grant/Amounts:* It is estimated that approximately $2.5 million will be available to support approximately 20–30 awards under this GFA in FY 1998. The average award for projects is expected to range from $30,000 to $100,000 in total costs (direct and indirect).
- *Catalog of Domestic Federal Assistance Number:* 93.230.
- For programmatic or technical assistance, contact: Howard R. Sampson, Director, Division of State and Community Assistance, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 880, 301–443–3820.

For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 360, 301–443–9666.

The mailing address for the individuals listed above is: 5600 Fishers Lane, Rockville, MD 20857.

- Application Kits are available from: National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847–2345, 800–729–6686; 800–487–4889 TDD.

4.2 Cooperative Agreements

Major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Cooperative Agreements for Replication of Effective Treatment for Methamphetamine Dependence and Improvement of Cost-Effectiveness of Treatment (Short Title: Methamphetamine Treatment, GFA No. TI 98–002)

- *Application Deadline:* June 8, 1998.
- *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of funds to test the replicability of specific non-residential programs for the treatment of methamphetamine abuse.

This program is designed to determine the ability to replicate the MATRIX models of non-residential treatment for methamphetamine dependence. A collaborative, cross-site approach is essential in order to study and evaluate the effectiveness and cost-effectiveness of both the 8 and 16 week MATRIX models of methamphetamine dependence treatment.

The program's goals are to: replicate the MATRIX model in multiple sites and document adaptations made; evaluate the effectiveness and cost-effectiveness of the 8 week and 16 week courses of methamphetamine treatment in these sites; compare the MATRIX models (8-week and/or 16-week) of treatment to the ongoing (existing treatment at the site) treatment program, if suitable; determine the problems involved in replication and technology transfer; and contribute to the development of knowledge on non-residential treatment of methamphetamine dependence.

Applications are solicited for two types of awards: study sites and a coordinating center to provide technical assistance and training, and analyze the cross-site data. Study site applicants must verify the provision of methamphetamine treatment services for a minimum of two years prior to the date of the application and must currently be delivering services to methamphetamine dependent clients on an non-residential basis. Applications will be accepted from the same entity for both study site and coordinating center roles. Applicants who wish to apply for both roles must submit a separate application for each.

- *Priorities:* None.
- *Eligible Applicants:* Applications may be submitted by units of State or local government and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals.
- *Cooperative Agreements/Amounts:* It is estimated that approximately $2.4 million will be available to support approximately 5–7 awards (5 or 6 study sites plus one coordinating center) under this GFA in FY 1998. The average yearly award is expected to range from $300,000 to $360,000 in total costs (direct+indirect) for the study sites and $600,000 (direct+indirect costs) for the coordinating center.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- For programmatic or technical assistance, contact: Ms. Cheryl J. Gallagher, Division of Practice and

Systems Development, Organization of Services Branch, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 7th floor, (301) 443–7259.

• For business management assistance, contact: Mrs. Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, 6th Floor, (301) 443–9666.

The mailing address for all of the individuals listed above is: 5600 Fishers Lane, Rockville, Maryland 20857.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345, (800) 729–6686; (800) 487–4859 TDD.

4.2.2 Cooperative Agreements for Providing Coordinated Prevention Services to Children of Substance Abusing Parents (COSAPs) and their Families (Short Title: COSAPs, GFA No. SP 98–003)

• *Application Deadline:* June 8, 1998.

• *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds to generate new, empirical knowledge about what prevention models and associated services are most effective for enhancing COSAP's protective factors and minimizing their risk factors for developing substance abuse and/or other behavioral, emotional, social, cognitive and physical problems as a result of their parents' substance abuse. The target population includes three age groups (6–8; 9–11; and 12–14 year olds).

The three objectives of this program are to: (1) determine what are the most effective prevention intervention models and associated services for preventing, delaying and/or reducing substance abuse by COSAPs that can be implemented in local communities; (2) measure and document declines in substance abuse as well as other negative outcomes of COSAP status pertaining to behavioral, emotional, social cognitive and physical development and/or abuse; and (3) document the program implementation in the form of a manual that can be used in other communities and/or for other COSAP populations.

Study sites will be expected to implement, refine or adapt an established scientifically defensible and effective substance abuse prevention intervention program for COSAPs in a local community setting as well as provide additional and associated services that are needed to address their behavioral, emotional, social, cognitive and physical problems, determine their effectiveness, and document their implementation, design and content so that they can be replicated in other settings and/or for other COSAP populations.

CSAP anticipates funding approximately 18 study sites and a Data Coordinating Center to guide and support study sites' work. The Data Coordinating Center will also guide, support the work for another CSAP program—GFA No. SP 98–004, Cooperative Agreements for Initiatives on Welfare Reform and Substance Abuse Prevention for Parenting Adolescents.

• *Priorities:* None.

• *Eligible Applicants:* Applications may be submitted by units of State or local government and by domestic private nonprofit or for-profit organizations such as community-based organizations, universities, colleges and hospitals. Applicants cannot apply for both a Study Site and a Coordinating Center grant. They must choose to apply for one or the other to avoid any conflict of interest issues.

• *Cooperative Agreements/Amounts:* it is estimated that approximately $7.2 million will be available to support approximately 18 COSAP Study Sites and $0.8 million will be available to support a Data Coordinating Center which will serve both for the COSAP Study Sites and the Parenting Adolescent Study Site awards under this program in FY 1998. The award for each Study Site should average about $400,000 for both direct and indirect costs.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• For programmatic or technical contact: Soledad Sambrano, Ph.D., Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, SAMHSA, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9110 [Fax: (301) 443–8965].

• For business management assistance, contact: Mrs. Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3958.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information Post Office Box 2345, Rockville, Maryland 20857–2345, (800) 729–6686; (800) 487–4859 TDD.

4.2.3 Cooperative Agreements for Initiatives on Welfare Reform and Substance Abuse Prevention for Parenting Adolescents (Short Title: Parenting Adolescents, GFA No. SP 98–004)

• *Application Deadline:* June 8, 1998.

• *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds to support cooperative agreements which address the needs of teen parents affected by welfare reform. The program is designed to generate knowledge on the effects of comprehensive preventive interventions aimed at parenting teens currently enrolled in, or eligible for, benefits under TANF. Preventive interventions must address the following four objections which CSAP has identified as critical for this population: prevention or reduction of alcohol, tobacco, and drug use; improvement in academic performance; reduction in subsequent pregnancies; and improvement in parenting and life skills and general well-being.

Because parenting adolescents and their children are clearly at risk for negative outcomes including substance abuse, and the subset of parenting teens affected by welfare reform is equally if not more at risk, CSAP has a compelling interest in stimulating the design and testing of programs that complement and support welfare reform programs in ways which ensure the healthy growth and development of both adolescent parents and their children and minimize their risks of substance use/abuse.

Study sites will strive to ascertain the effects of providing comprehensive services to adolescent parents and their families who are TANF recipients (and/or those eligible to receive TANF benefits) in the midst of the changes that are being implemented by States. Sites will be expected to fully document changes in the welfare program in their State which affect their local community, and to develop and implement comprehensive services for at-risk parenting adolescents and their families that can demonstrate outcomes in support of the above-noted objectives.

Study sites funded under this GFA will produce two products: a final report on the program history, findings, and conclusions; and a replication manual which can be disseminated to the field for future implementation of similar projects. To guide and support grantees' work, CSAP will establish a Data Coordinating Center. A full description of the requirements of the Data Coordinating Center can be found in GFA No. SP 98–003—Cooperative Agreements for Providing Coordinating Prevention Services to Children of Substance Abusing Parents (COSAPs) and their Families.

• *Priorities:* None.

• *Eligible applicants:* Applications may be submitted by units of State or

local government, and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals. An applicant may apply to be either a Study Site or the Data Coordinating Center, but not both. (Note: As discussed above, applications for the Data Coordinating Center are being solicited under GFA SP 98–003.)

• *Cooperative Agreements/Amounts:* It is estimated that approximately $4.3 million will be available to support 9–12 awards of no more than $500,000 (including direct and indirect costs) under this GFA in FY 1998.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• For programmatic or technical information regarding this grant (not for application kits) contact: Laura J. Flinchbaugh, MPH, Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, SAMHSA, Rockwall II, Room 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6612.

For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, Room 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9666.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P. O. Box 2345, Rockville, MD 20847–2345, (800) 729–6686; (800) 487–4859 TDD.

4.2.4 Cooperative Agreement for the Center for the Application of Prevention Technologies (CAPT) to Support the U.S.-Mexico Border Four-State Substance Abuse Initiative (Short Title: Border CAPT, GFA No. SP 98–002)

• *Application Deadline:* June 8, 1998.

• *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds to assist border State to apply on a consistent basis, the latest research knowledge to their substance abuse prevention programs, practices, and policies. The program goal is to use conventional and electronic delivery methods to assist border States, their subrecipient communities, and other border communities in effectively applying and utilizing scientifically defensible substance abuse prevention knowledge and technology.

The Border CAPT will focus its efforts on four key prevention topic areas. These topic areas include: youth illicit drug use (with an emphasis on marijuana); underage drinking; alcohol, drugs, and violence; and HIV/AIDS and drug use. The applicant may be required to provide services on other topic areas as well. The applicant must also provide technical assistance using the following six CSAP prevention strategies: information dissemination, education, community mobilization, alternatives, environmental change, and early identification and referral.

An applicant must apply to serve the four-State border region (Arizona, California, New Mexico, and Texas) and specifically the 60 mile corridor running parallel to the U.S.-Mexico border. The grantee will be expected to maintain a physical presence in the four-State region to be served.

• *Priorities:* None.

• *Eligible Applicants:* Applications may be submitted by units of State or local government and by domestic private nonprofit or for-profit organizations such as community-based organizations, universities, colleges, and hospitals.

• *Cooperative Agreements/Amounts:* It is estimated that approximately $600,000 will be available to support one award under this GFA in FY 98.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• For programmatic or technical assistance contact: Ms. Luisa del Carmen Pollard, M.A., Division of Community Education, Center for Substance Abuse Prevention, SAMHSA, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–0373.

• For business management assistance, contact: William Reyes, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–7375.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, 800/729–6686; 800/487–4889 TDD.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn

Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 10, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10035 Filed 4–15–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–840182

Applicant: Zoological Society of San Diego, Escondido, CA

The applicant has requested a permit to re-export one captive-held Northern White Rhinoceros (*Ceratotherium simum cottoni*) to the Zoo Dvur Kralove, Czech Republic to enhance the survival of the species through captive breeding.

PRT–840189

Applicant: Carribbean Gardens, Naples, FL

The applicant has requested a permit to export one captive-born tiger (*Panthera tigris*) to the Bowmanville Zoo, Ontario, Canada, to enhance the survival of the species through captive breeding and conservation education.

PRT–704301

Applicant: Dirk Arthur & Jan Giacinto, Las Vegas, NV

The applicant requests a permit to export and reimport captive born tigers (*Panthera tigris*), leopards (*Panthera pardus*) and jaguars (*Panthera onca*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–841670

Applicant: C. Anne Dogson, Ogden, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–841208

Applicant: Howard H. Davenport, Ingleside, IL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–841666

Applicant: Wayne Lu, Kula, HI

The applicant requests a permit to import the sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–841665

Applicant: Robert Fay, Jr., Allsion Park, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 10, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–10052 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On December 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 238, Page 65281, that an application had been filed with the Fish and Wildlife Service by Dwight Davis for a permit (PRT–837238) to a polar bear (*Ursus maritimus*) trophy taken from the Davis Strait population, Northwest Territories, Canada prior to April 30, 1994, for personal use.

Notice is hereby given that on April 2, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 20, 1998, a notice was published in the **Federal Register**, Vol. 63, No. 34, Page 8658, that an application had been filed with the Fish and Wildlife Service by Jesse Kirk for a permit (PRT–838024) to import a polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on April 2, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North

Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: April 10, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–10051 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service (Service) implementing regulations, notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc.	Exploration (Liberty)	March 16, 1998.
BP Exploration (Alaska) Inc.	Exploration (Flaxman Island)	March 16, 1998.
Exxon Company, U.S.A.	Construction (Flaxman Island)	March 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with Service implementing regulations 50 CFR 18.27 and 50 CFR 18.128.

Dated: March 30, 1998.

Robyn Thorson,

Acting Regional Director.

[FR Doc. 98–9366 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council which was established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99–294, May 12, 1986). The meeting is open to the public.

DATES: The Garrison Diversion Unit Federal Advisory Council will have a meeting, on Tuesday, May 5, from 1 through 4:30 p.m. and from 8 a.m. until noon on Wednesday, May 6.

ADDRESSES: The meeting will be held at the North Dakota Game and Fish Department, 100 N. Bismarck Expressway, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: Dr. Grady Towns, Refuges and Wildlife, North Dakota/South Dakota, at (303) 236–8145, extension 644.

SUPPLEMENTARY INFORMATION: The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Kraft Slough status and acquisition, the Dakota Water Resources Act, North Dakota Wetland Trust, Operation Maintenance, and Replacement funding for mitigation and enhancement lands, Wildlife Development Plan, Lonetree Update, Arrowwood National Wildlife Refuge EIS and mitigation effort, Designation of Kraft Slough as a National Wildlife Refuge, and the Oakes Test area.

Dated: April 9, 1998.

Terry Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 98–10074 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 80697]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Coal Lease Offering By Sealed Bid MTM 80697—Western Energy Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Rosebud County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Western Energy Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearing have been completed in accordance with 43 CFR 3425. Concerns and issues expressed by the public during the public scoping process centered on social, economic, and cultural impacts to the Northern Cheyenne and Crow Tribes, hydrologic impacts to the area, and the need to do an Environmental Impact Statement as the appropriate level of environmental documentation for the development of the coal resources. Three alternatives (Preferred, No Action, and Cultural Resource Avoidance) were developed to analyze impacts and to address issues relating to the proposed action. The Preferred Alternative, including special stipulations and mitigation measures, was chosen because it will maximize the beneficial use of the subject coal resource and will mitigate impacts to one historic site and two sites which have high values as traditional cultural properties.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered consists of all recoverable reserves in the following-described lands located approximately 10 miles west of the town of Colstrip, Montana:

T. 1 N., R. 39 E., P.M.M.
Sec. 2: S½NW¼, N½NE¼SE¼
T. 1 N., R. 40 E., P.M.M.
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½
Sec. 8: E½, N½NW¼

Sec. 14: S½SW¼, SE¼
T. 2 N., R. 40 E., P.M.M.
Sec. 32: All.
Containing 2,061 acres, Rosebud County, Montana.

The Rosebud seam, averaging 22.3 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 35.6 million tons of recoverable reserves. Coal quality, as received, averages 8,360 BTU/lb., 25.52 percent moisture, 10.03 percent ash, and 0.97 percent sulfur. This coal bed is being mined in adjoining tracts by Western Energy Company.

Rental and Royalty

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of the coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATES: Lease Sale—The lease sale will be held at 10 a.m., Thursday, May 7, 1998, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 9 a.m., Thursday, May 7, 1998, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: April 3, 1998.

Larry E. Hamilton,

State Director.

[FR Doc. 98–10127 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP8–0154]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council; Pendleton, Oregon; May 11 & 12, 1998.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on May 11, 1998 from 1:00 p.m. to 5:00 p.m. at the Department of Natural Resources Conference Room on the Umatilla Reservation, and on May 12 from 7:30 a.m. to 3:00 p.m. at the Doubletree Inn, 304 SE Nye Ave., Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 1:00 p.m. on May 12. The May 11 session will include a tour of Tribal Headquarters and a field trip to view conservation work on the reservation. The May 12 session will include the future RAC program of work, a review of the BLM Strategic Plan, approval of a subgroup nomination and selection process, an update of the John Day River plan subgroup and an update on the recreation fee demonstration areas.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: April 2, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–10107 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW96029]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

April 2, 1998.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW96029 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW96029 effective November 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 98–10108 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–56769]

Notice of Realty Action; Recreation and Public Purposes Act Classification; NV

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following described land in Eureka County, Nevada, has been examined and identified as suitable for classification for conveyance for recreation or public purpose under the provisions of the Recreation and Public Purpose (R&PP) Act of June 14, 1926, as amended, (43 U.S.C. 869 *et seq.*). The Eureka County Board of Commissioners has made application to acquire the land which contains the existing Maiden's Grave Cemetery site. The action would serve to authorize the cemetery which has important historical values. The lands would be conveyed to Eureka County at the regular pricing rate of fair market value as determined by an appraisal, less a fifty percent discount.

Mount Diablo Meridian, Nevada

T. 31 N., R. 49 E.,
Section 10, S½NE¼SW¼SW¼, N½SE¼SW¼SW¼.
Comprising 10.00 acres, more or less.

The land is not required for any other Federal purpose. The classification and subsequent conveyance is consistent with the Bureau's land use planning for the area and would be in the public interest.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain the

following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under application law and such regulations as the Secretary may prescribe.

Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada. Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act, and leasing under the mineral leasing laws. The segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

For a period of 45 days from the date of this publication in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the land to the District Manager, Elko Field Office, 3900 E. Idaho St., Elko, Nevada, 89801. The land would not be offered for conveyance for at least 60 days after the date of publication of this Notice in the **Federal Register.**

Classification Comments

Interested parties may submit comments involving the suitability of the land for a cemetery. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a cemetery. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: April 2, 1998.

Helen Hankins,

District Manager.

[FR Doc. 98–10061 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–60557]

Notice of Realty Action; Noncompetitive Sale; NV

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following land in Eureka County, Nevada has been examined and identified as suitable for disposal by noncompetitive sale, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719), at no less than fair market value as determined by an appraisal:

Mount Diablo Meridian, Nevada

T. 29 N., R. 48 E.,
Section 4, Lots 14, 15, 18, 19.
Comprising 9.10 acres, more or less.

The above described land is being offered as a direct sale to the Eureka County Board of Commissioners. The land will not be offered for sale until at least 60 days after the date of publication of this Notice in the **Federal Register.**

Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Elko Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The mineral estate will be conveyed simultaneously with the sale of the surface estate. Acceptance of the sale offer will constitute an application to acquire the mineral estate. A nonrefundable administrative fee of $50.00 will be required to be submitted with the purchase money. Failure to submit the purchase money and the nonrefundable administrative fee within the time frame specified by the authorized officer will result in cancellation of the sale. Upon publication of this Notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, whichever occurs first. The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

And will be subject to: Those rights for powerline purposes which have been granted to Sierra Pacific Power Co., its successors or assignees, by right-of-way grant N–5578 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761). The land will not be conveyed until that portion of airport lease N–56882 affecting the described sale land is relinquished by Eureka County.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties my submit comments to the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: April 2, 1998.

Helen Hankins,

District Manager.

[FR Doc. 98–10062 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

T. 14 N., R. 3 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivision of section 34, Township 14 North, Range 3 West, Principal Meridian, Montana, was accepted March 30, 1998.

This survey was executed at the request of the Bureau of Land Management, Headwaters Resource Area and was necessary to identify and establish property lines to help resolve present and potential trespasses and to help clear clouds of title.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 3, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–10126 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Borden Chemicals and Plastics Operating Limited Partnership, et al.*, Civ. Action Nos. 94–440–A–2 and 94–2592–A–M2, was lodged in the United States District Court for the Middle District of Louisiana on April 9, 1998. The proposed Consent Decree resolves the United States' claims in Civil Action No. 94–2592–A–M2 for injunctive relief and civil penalties against defendants Borden Chemicals and Plastics Operating Limited Partnership and Borden Chemicals and Plastics Management, Inc. (hereafter referred to as "Borden"), brought pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.* The proposed Consent Decree also resolves Borden's Complaint in Civil Act No. 94–440–A–2 against the United States seeking declaratory judgment. The United States' claims arose from the release of hazardous wastes and constituents into soil and groundwater at Borden's Geismar, Louisiana facility and involved RCRA permitting requirements, as well as violations under the CAA for failing to limit urea emissions and failing to immediately report releases of hazardous substances under CERCLA.

Under the terms of the Consent Decree, Borden will: (1) Pay a civil penalty in the sum of $3.6 million; (2) perform a facility wide corrective action under RCRA; (3) commence interim measures of investigation and remediation, if necessary, in the Norco Aquifer, the shallow groundwater zones, the "S" zone and eight other soil and groundwater areas of the facility; (4) apply for a RCRA permit for Borden's VCR Unit and any other RCRA-regulated Unit; (5) decommission the underground injection wells at the facility; and (6) set aside $400,000 to fund community based programs consisting of equipment donations to local emergency response units and funding for a technical center for the dissemination of information related to environmental decision making and citizen participation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Borden Chemicals and Plastics Operating Limited Partnership, et al.*, Civ. Action Nos. 94–440–A–2 and 94–2592–A–M2, DOJ # 90–11–2–875.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Louisiana, Russell B. Long Federal Building, 777 Florida Street, Suite 208, Baton Rouge, Louisiana 70801; at the Region VI Office of the U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $29.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–10110 Filed 4–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on March 20, 1998, a proposed Consent Decree in *United States* v. *Madison Metropolitan Sewerage District* ("MMSD"), Case Number 98–C–0197–S, was lodged in the United States District Court for the Western District of Wisconsin. The Complaint filed by the United States sought to require MMSD to perform a remedial action selected by U.S. EPA for the Site, and to pay U.S. EPA's future oversight costs as well as all of the United States' unreimbursed past response costs incurred by the United States pursuant to CERCLA, 42 U.S.C. 9601 et. seq. The Consent Decree requires Defendant MMSD to reimburse the United States in the amount of $33,565.23.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States v. Madison Metropolitan Sewerage District,* D.J. Ref. No. 90–11–2–1316.

The proposed Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Western District of Wisconsin, Suite 200, 600 West Washington Ave., P.O. Box 1585, Madison, WI 53701–1585 (contact Assistant United States Attorney Mark Cameli); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Thomas Krueger); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892.

Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $24.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–10111 Filed 4–15–98; 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 42 U.S.C. 9601, et seq.

Under 28 U.S.C. 50.7 notice is hereby given that on March 31, 1998 proposed Consent Decrees ("Decrees") in United States v. Ray McCune, et al, Civil Action No. 2:97CV 0860K were lodged with the United States District Court for the District of Utah.

In this enforcement action under Sections 104, 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9604, 9607 and 9613(g)(2), and 28 U.S.C. 2201, the United States sought reimbursement of response costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances from the Reclaim Barrel Company Site. The Site is located at 8487 South Redwood Road, West Jordan, Salt Lake County, Utah ("the Site"). One proposed Consent Decree resolves claims against: Amoco Corporation; Ashland Chemical Company, a Division of Ashland, Inc.; Chemcentral Corporation d/b/a Chemcentral; CRP, Inc. d/b/a Springlite; DLD Distributing Company of Wyoming; Dyce Chemical, Inc.; Environmental Chemistries, Inc. d/b/a Enchem; Faball Acquisitions; Faball Enterprises of Utah; Intermountain Equipment Sales Company; Rhinehart Oil Company Inc.; Thatcher Chemical Company; Triton Fuel Group, Inc. d/b/a Dunn Oil Company; Triton Energy Corporation; Union Pacific Railroad Company; Van Waters and Rogers, A Royal Pakhoed Company; WestScot Corporation; and WestKem-Hall, Inc. This proposed Consent Decree recovers response costs of $865,000. The second proposed Consent Decree resolves similar claims against Defendant, Ray McCune. This proposed Consent Decree recovers response costs of $100,000. These settlements will resolve claims against all Defendants in this case except for Kaziah May Jordan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, United States v. Ray McCune, et al, Civil Action No. 2:97CV 0860K D.J. Ref. #90–11–2–1270.

The Decrees may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, Co. 80202, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $10.25 for the Decree between the United States and the corporate Defendants and $6.25 for the Decree between the United States and Ray McCune (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. 98–10109 Filed 4–15–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; BJA-Offense Coverage Certification-Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 15, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Linda James McKay, 202–514–6638, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Overview of this Information

(1) Type of information collection: New Collection.

(2) The title of the form/collection: BJA-Offense Coverage Certification-Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form Number: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State Government Agency responsible for implementing Jacob Wetterling Act.

Other: None.

The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1988, and is designed to provide support to its constituency group of state and local criminal justice agencies to initiate innovate projects that respond effectively to crime problems and improve operations of the Nation's criminal justice system. Non-

compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as amended, by the prescribed statutory deadlines will result in a 10 percent reduction in the amount of monies awarded to the non-complying state.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 56 respondents to conduct the legal research and complete the form is 2 hours per form. This will be a one time collection.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete all certifications is 112 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 10, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10046 Filed 4–15–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Reinstatement, with change, of previously approved collection for which approval has expired.

National Survey of Indigent Defense Systems

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 15, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or need additional information, please contact Dr. Carol J. DeFrances, Statistician, Bureau of Justice Statistics, 810 7th Street, N.W., Washington, D.C. 20531, or via facsimile (202) 307–5846.

Overview of This Information Collection

(1) Type of information collection: Reinstatment, with change, of a previously approved collection for which approval has expired.

(2) The title of the form/collection: National Study of Indigent Defense Systems.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Previous OMB number was 1121–0095. The agency form number is NSID–2. Bureau of Justice Statistics, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and local providers of indigent defense services including selected county officials to identify indigent defense programs.

Other: None.

This information collection will identify the number and characteristics of public defense organizations and agencies and measure the way in which States provide legal services for indigent criminal defendants, their caseloads, policies and practices. Information also will be gathered on type of offenses represented, expenditures, funding sources and other related administrative issues. The information collected will provide a comprehensive portrait of state and local efforts to meet the needs of indigent criminal defendants.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 1,500 respondents for the data collection period of July 1998 to July 1999. Completion of data form is estimated at 1.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 2250.00 total burden hours for the data collection.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: April 10, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10059 Filed 4–15–98; 8:45am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; New information collection; Data collection instrument survey of environmental programs for youth at risk.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register.**

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through 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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Kristen Kracke (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Kirsten Kracke, (202) 307–5914, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Room 8245, Washington, DC 20531.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Survey of Environmental Programs for Youth at Risk.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. *Form:* None. *Sponsoring Department:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* Public land managers and public or private organizations operating environmental programs for youth at risk of delinquency. *Other:* None. This collection will develop first a list of similar programs that provide substantive environmental work experience to youth who have shown the precursors to delinquent activity or have shown actual delinquent behavior. The information from the survey will indicate the extent to which such programs exist and provide information needed to create a network of such programs throughout the United States. Such network is essential to develop a system of information sharing and delivery of technical assistance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,160 respondents with an average 10 minutes per response for land managers and program managers and an average 30 minutes per response for service provider agencies.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 318 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 10, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10047 Filed 4–15–98; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Technical and Administrative Support for a National Meeting of Folk Arts Coordinators

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to provide administrative and technical assistance services that will support professional development activities for state and regional Folk Arts Coordinators. This will entail planning, organization, and implementation of a national meeting in conjunction with the annual National Assembly of State Arts Agencies meeting to be held in Portland, Oregon in November 1998. Funding is anticipated to be $50,000. Eligibility to apply for the Cooperative Agreement is limited to nonprofit organizations, including educational institutions, and units of state and local government, ideally with a working knowledge of and a track record of experience with the folk and traditional arts field. Those interested in receiving the Solicitation should reference Program Solicitation PS 98–05 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–05 is scheduled for release approximately May 4, 1998 with proposals due on June 4, 1998.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–10117 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the Fellowships Panel (Jazz Section), advisory panel to the National Council on the Arts, will hold a Jazz Symposium on May 12–13, 1998. The panel will meet from 1:00 p.m. to 5:30 p.m. on May 12, and from 9:00 a.m. to 4:00 p.m. on May 13, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

The meeting will be open to the public on a space available basis. Topics tentatively will include discussion of the Endowment's Guidelines, a proposed study of Jazz Artists in America, and the needs and issues facing the American jazz artist, covering topics such as Jazz Education & Curriculum Development, Jazz Professional Training, Touring/ Presenting, Media, Services for Jazz Artists, and Support of Jazz Programs/ Artists. If, in the course of discussion, it becomes necessary for the Panel to discuss non-public commercial or financial information of intrinsic value, the Panel will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Panel in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Jan Stunkard, Associate Division Coordinator, at (202) 682–5477, or write to Ms. Stunkard at the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Room 703, Washington, DC 20506. Further information with reference to this meeting can be also obtained from Ms. Stunkard.

If you need special accomodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: April 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–10093 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Fellowships Panel (American Jazz Masters Fellowships Section), advisory panel to the National Council on the Arts, will be held on May 12–13, 1998. The panel will meet from 9:00 a.m. to 1:00 p.m. on May 12, and from 4:00 p.m. to 4:30 p.m. on May 13, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on nominations for American Jazz Masters Fellowship awards under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by nominees. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Jan Stunkard, Association Division Coordinator, Education & Access Division, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5477.

Dated: April 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–10094 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (Millennium/Media Section) to the National Council on the Arts will meet on May 6, 1998. The panel will meet from 10:00 a.m. to 3:00 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants.

In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c) (4) and (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691,

Dated: April 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–10096 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Panel—Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (Millennium Section) to the National Council on the Arts will meet on April 29, 1998. The panel will convene by teleconference from 2:00 p.m. to 3:00 p.m. The teleconference will be held from Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants.

In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: April 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–10097 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Panel—Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (Millennium Section) to the National Council on the Arts will meet on May 4, 1998. The panel will convene by teleconference from 2:00 p.m. to 3:00 p.m. The teleconference will be held from Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants.

In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: April 20, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–10098 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities; Meeting XLII

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on May 1, 1998 from 9:00 a.m. to 12:30 p.m. The Committee will convene to discuss a variety of reports and projects. The meeting will be held at the John F. Kennedy Center for the Performing Arts, Washington, DC.

At 9:00 a.m. the Committee meeting will begin with opening remarks by Dr. John Brademas, Chairman, and a welcome from Lawrence Wilker, President, The Kennedy Center. This will be followed by the Chairman's Report, the Executive Director's Report from Harriet Mayor Fulbright, and reports from the Director of the Institute of Museum and Library Services and from the Chairmen of the National Endowment for the Arts and the National Endowment for the Humanities. The Committee will then hear project reports on Millennium Trails, The Millennium Council: International, the Systemic Arts Education Project, and the Coming Up Taller Initiative, followed by general discussion and planning. The meeting will adjourn at 12:30 p.m.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Regina Syquia of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Syquia.

If you need special accommodations due to a disability, please contact Ms. Syquia through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: April 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–10095 Filed 4–15–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 97–87).

Date and Time: May 12, 1998; 8:30am–5:00pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George B. Vermont, Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate MRI proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10159 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Processes—(5138) (Panel A).

Date and Time: Thursday and Friday, May 7 & 8, 1998, 9:00 A.M.–5:00 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Shiladitya DasSarma, Program Director, and Dr. Susan Porter Ridley, Assistant Program Manager, for Metabolic Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1441).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10160 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry (#1191).

Date and Time: May 4–5, 1998.

Place: Rooms 310, 365 and 370, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joseph Reed, Program Director, Chemical Instrumentation Program, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1849.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Chemistry Research Instrumentation

and Facilities Program and the Major Research Instrumentation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10164 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Workshop

The National Science Foundation (NSF) will hold a two-day workshop on the potential for digital libraries to increase both the quality of undergraduate science, mathematics, engineering, and technology (SMET) education and access to high quality SMET education. The workshop will be held from 7:00–9:30 PM, Tuesday, July 21; 8:30 AM–9:00 PM, Wednesday, July 22; and 8:30 AM–3:30 PM, Thursday, July 23, 1998 at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. The purpose of this workshop is to gather input from potential library users to assist the NSF in determining and articulating the uses of digital libraries in undergraduate SMET education.

Although the workshop will not operate as an advisory committee, the public will be invited to attend. Participants will include faculty and students who are potential users of SMET educational resources; developers of SMET educational resources including resources exploiting information technology; and other interested parties. A report of the workshop will be published for general distribution.

For additional information, contact Drs. Lillian Cassel and Frank Wattenberg, Program Directors, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1667.

Dated: April 7, 1998.

Dr. Norman Fortenberry,

Division Director, Undergraduate Education.

[FR Doc. 98–10158 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date and Time: May 6–8, 1998; 8:30 AM–6:00 PM.

Place: UCLA Ion Microprobe Facility, #3814 Geology Bldg., University of California, Los Angeles.

Type of Meeting: Closed.

Contact Persons: Russell Kelz, Division of Earth Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1555 x7043.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Instrumentation and Facilities Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

[FR Doc. 98–10162 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers.

Date and Time: May 4–5, 1998; 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ernest T. Smerdon, Senior Education Associate, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted under the Action Agenda for Systemic Engineering Education Reform Guidelines.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c), (4), and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10165 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: May 8, 1998 from 8:30 AM to 5:00 PM.

Place: Room 1150, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Steve Mahaney, PD/CISE Research Infrastructure, Experimental & Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4), and (6) of the Government in the Sunshine Act.

Dated: April 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10155 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: May 6, 1998 from 8:30 AM to 5:00 PM.

Place: Room 310, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dragana Brzakovic, Major Research Instrumentation, Experimental & Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10163 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) (Panel A).

Date and Time: Monday, May 4 and Tuesday, May 5, 1998, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm. 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Philip Harriman, Program Director for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10166 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: May 7–8, 1998, 8:30 a.m.–5:00 p.m.

Place: Room 1020 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Alvin I. Thaler, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1880.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Scientific Computing Research Environments for the Mathematical Science (SCREMS) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10161 Filed 4–15–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

In the Matter of Power Authority of the State of New York; (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located in Westchester County, New York.

II

The *Code of Federal Regulations* 10 CFR 50.60, states that the reactor coolant pressure boundaries for light water reactors must meet the fracture toughness and material surveillance program requirements set forth in Appendices G and H to 10 CFR Part 50.

By letter dated January 28, 1998, the licensee requested an exemption from 10 CFR 50.60 to allow the use of an alternate methodology for the development of pressure-temperature (P–T) curves. As an alternative, the licensee proposed to use a methodology by ABB Combustion Engineering Nuclear Operations (the CE methodology).

References in 10 CFR 50.60 and Appendix G require the use of a methodology at least as conservative as that found in Appendix G to the 1989 Edition of Section XI of the ASME Code (the 1989 ASME Appendix G methodology or the 1989 methodology); therefore, the staff must review and approve the use of the CE methodology. The staff has reviewed the licensee's request and approves the use of the CE methodology in place of the 1989 methodology for the construction of reactor vessel pressure-temperature (P–T) limits as described in 10 CFR Part 50, Appendix G. The CE methodology was used in the licensee's P–T limit amendment submittal dated February 27, 1998.

III

The NRC has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, 10 CFR Part 50, Appendix

G requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operation and vessel hydrostatic testing. In particular, 10 CFR Part 50, Appendix G, Section IV.2.b., requires that these limits must be "at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code." The *Code of Federal Regulations* at 10 CFR 50.55(a) specifies that the applicable ASME Code is the 1989 Edition. The *Code of Federal Regulations* at 10 CFR 50.60, which broadly addresses the establishment of criteria for fracture prevention, states that "proposed alternatives to the described requirements in Appendices G and H of this part or portions thereof may be used when an exemption is granted by the Commission under § 50.12." The licensee used the CE methodology for constructing its P–T limits in place of the 1989 ASME Appendix G methodology approved by the staff in the regulations; therefore, the licensee applied for an exemption to use the CE methodology.

IV

In the submittal, the exemption was requested under the special circumstances given in 10 CFR 50.12(a)(2)(ii). The provisions of this section state that special circumstances are present whenever "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." In the application, the licensee stated that "The use of ABB–CE alternate methodology requested by this exemption provides greater operational flexibility while still maintaining reactor vessel integrity. In addition, the use of the ABB–CE methodology to generate pressure-temperature curves yields comparable results to the use of the ASME Appendix G methodology. Therefore, the reactor vessel is protected against nonductile failure and the underlying purpose of the rule is achieved."

The staff reviewed the licensee's application and the CE methodology and has concluded that this alternative method meets the underlying intent of the regulations. The thermal analysis method of the CE methodology consists of a plant-specific thermal analysis and a fracture mechanics analysis based on influence coefficients from finite element analyses under thermal loading. The staff review determined that this thermal analysis method is more rigorous than that of the 1989 methodology and that the rest of the CE methodology is the same as the 1989 ASME Appendix G methodology. The staff concludes, therefore, that an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the application of the CE methodology meets the underlying intent of the regulations.

V

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternative methodology in determining the P–T limits will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

Therefore, the Commission hereby grants the following exemption:

The Power Authority of the State of New York is exempt from the requirements of 10 CFR 50.60 in that they are permitted to use the CE methodology detailed in their application for exemption dated January 28, 1998, for developing P–T limits for the Indian Point Nuclear Generating Station Unit No. 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (63 FR 17902).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10102 Filed 4–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

In the Matter of Power Authority of the State of New York; (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located in Westchester County, New York.

II

The *Code of Federal Regulations*, 10 CFR 50.60, states that the reactor coolant pressure boundaries for light water reactors must meet the fracture toughness and material surveillance program requirements set forth in Appendices G and H to 10 CFR Part 50.

By letter dated November 3, 1997, the licensee requested an exemption from 10 CFR 50.60 to allow the use of the American Society of Mechanical Engineers (ASME) Code Case N–514 for the determination of the low temperature overpressurization system (LTOP) parameters in place of the margins required by Appendix G to 10 CFR Part 50. The Code Case limits the overpressurization system (OPS) curve to not greater than 110% of the pressure determined to satisfy Appendix G, paragraph G–2215 of ASME Code, Section XI, Division 1, further reduced to allow for static head due to elevation differences and dynamic head effect of the operation of the four reactor coolant pumps. The Code Case also allows some latitude in determining the OPS enable temperature.

III

The NRC has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, 10 CFR Part 50, Appendix G, requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operation and vessel hydrostatic testing and as stated in Appendix G, "The appropriate requirements on * * * the pressure-temperature limits * * * must be met for all conditions." The *Code of Federal*

Regulations, 10 CFR 50.60, states that "Proposed alternatives to the described requirements in Appendices G and H of this part or portions thereof may be used when an exemption is granted by the Commission under § 50.12." Since the licensee wishes to use Code Case N–514 as opposed to the requirements of Appendix G, an exemption to the regulations is necessary.

IV

In referring to 10 CFR 50.12 on specific exemptions, the licensee cited special circumstance 10 CFR 50.12(a)(2)(ii) on achieving the underlying purpose of the regulations, 10 CFR 50.12(a)(iii) on undue hardship, and 10 CFR 50.12 (a)(iv) on good faith compliance as their bases for requesting this exemption.

The licensee noted in support of the 10 CFR 50.12(a)(2)(ii) criterion that the underlying purpose of the subject regulations is to establish limits to protect the reactor vessel from brittle failure during low temperature operation and that the OPS provides a physical means of protecting these limits. The licensee proposed that establishing the OPS pressure setpoint per the N–514 provisions such that the vessel pressure would not exceed 110 percent of the P–T limit allowables "* * * * reduces the unnecessary actuation of the LTOP system due to normal pressure surges that occur during low temperature operation * * * while maintaining acceptable safety margins." The staff determined that the "acceptable level of safety" using N–514 was based on the conservatism which has been explicitly incorporated into the procedure for developing the P–T limits. This procedure, referenced from Appendix G to Section XI of the ASME Code, includes the following conservatisms: (1) a safety factor of 2 on the pressure stresses; (2) a margin factor applied to RT_{NDT} using Regulatory Guide 1.99, Revision 2; (3) an assumed ¼ T flaw with a 6:1 aspect ratio; (4) a limiting material toughness based on dynamic and crack arrest data.

The licensee noted in support of the 10 CFR 50.12(a)(iii) criterion that, as the reactor vessel ages, the operating window for the LTOP system is reduced. This reduced window could lead to inadvertent actuation of the LTOP system which could, in turn, lead to rapid pressure changes.

The licensee noted in support of the 10 CFR 50.12(a)(iv) criterion that the plant is currently in conformance with 10 CFR 50.60 and that relief is being requested in order to maintain sufficient operating margin. The licensee also notes that the staff, in Draft Regulatory Guide 1050, has proposed to endorse Code Case N–514.

The staff reviewed the licensee's rationale to support the exemption request on the basis of 10 CFR 50.12(a)(iii) and the staff concluded that the use of Code Case N–514 would also meet the underlying intent of the regulations. Based upon a consideration of the conservatism which is explicitly defined in the Appendix G methodology (as listed Section 3.0 above), the staff concluded that permitting the OPS setpoint to be established such that the vessel pressure would not exceed 110 percent of the P–T limits would provide an adequate margin of safety against brittle failure of the reactor vessel. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

The staff reviewed the licensee's rationale to support the exemption on the basis of 10 CFR 50.12(a)(iii). The staff has previously granted exemptions for other licensees under similar circumstances; therefore, the staff has determined that operating with a reduced LTOP window would result in an undue hardship that is significantly in excess of that incurred by others similarly situated.

The staff reviewed the licensee's rationale to support the exemption on the basis of 10 CFR 50.12(a)(iv) and has determined that the licensee has made a good faith effort to comply with the regulation.

V

The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security.

Therefore, the Commission hereby grants the following exemption.

The Power Authority of the State of New York is exempt from the requirements of 10 CFR 50.60 in that they are permitted to use Code Case N–514 in place of the safety margins required by Appendix G to 10 CFR Part 50 to determine the LTOP parameters.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (63 FR 17903).

This exemption is effective upon issuance. Dated at Rockville, Maryland, this 10th day of April 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10103 Filed 4–15–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185

Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into "buy-in agreements" with the Secretary of Health and Human Services for the purpose of enrolling certain groups of needy people under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are

entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380–F is voluntary. One response is received from each respondent.

RRB Form RL–380–F is being revised to include language required by the Paperwork Reduction Act of 1995. Minor editorial changes are also being proposed. The completion time for Form RL–380–F is estimated at 10 minutes per response. The RRB estimates that approximately 600 responses are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–10106 Filed 4–15–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Pay Rate Report; OMB 3220–0097

Under Section 2(a) of the Railroad Unemployment Insurance Act, the daily benefit rate for unemployment and sickness benefits depends on the claimant's last daily rate of pay in the base year. The procedures pertaining to the use of a claimant's daily pay rate in determining the daily benefit rate are prescribed in 20 CFR 330.

The RRB utilities form UI–1e, *Request for Pay Rate Information*, to obtain information from a claimant about their last railroad employer and pay rate, when it is not available from other RRB records. Form UI–1e also explains the possibility of receiving a higher daily benefit rate if a claimant reports their daily rate of pay for railroad work in the base year. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes to revise Form UI–1e to add language required by the Paperwork Reduction Act of 1995. Non-burden impacting reformatting and editorial changes are also proposed. The completion time for Form UI–1e is estimated at 5 minutes per response.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–10112 Filed 4–15–98; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Supplement to Claim of Person Outside the United States.

(2) *Form(s) submitted:* G–45.

(3) *OMB Number:* 3220–0155.

(4) *Expiration date of current OMB clearance:* 6/30/1998.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 100.

(8) *Total annual responses:* 100.

(9) *Total annual reporting hours:* 17.

(10) *Collection description:* Under Public Law 98–21, the Tier I or the overall minimum portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the United States may be withheld. The collection obtains the information needed by the Railroad Retirement Board to implement the benefit withholding provisions of P.L. 98–21.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–10116 Filed 4–15–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39847; File No. SR–CSE–97–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the Cincinnati Stock Exchange, Inc. Relating to Market Order Exposure Requirements

April 10, 1998.

I. Introduction

On November 13, 1997, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change which was subsequently amended on February 25, 1998.[2] The

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Adam W. Gurwitz, Vice President, Legal and Corporate Secretary, CSE, to

Continued

proposed rule change relating to market order exposure requirements was published for comment in the **Federal Register** on March 11, 1998.[3] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description of the Proposal

The CSE is proposing to amend its Rule 11.9(u), Interpretation .01, concerning customer market order exposure requirements. Currently, under Interpretation .01, with certain exceptions, when the spread between the national best bid and offer is greater than the minimum price variation, a member must either immediately execute a market order at an improved price or expose that order on the exchange for a minimum of thirty seconds in an attempt to improve the price. The Exchange has determined, based on its experience with specialists quoting and trading in finer increments (*i.e.*, 1/16 point), that exposing a market order for thirty seconds creates additional risks to the specialists. The Exchange therefore proposed to require members, when the spread between the national best bid and offer is greater than the minimum price variation, to either immediately execute a market order at an improved price or expose the market order on the Exchange for a minimum of fifteen seconds (rather than the current thirty seconds) in an attempt to improve the price. The Exchange believes that a fifteen second exposure strikes a balance between the risks to specialists and the need to provide customers a meaningful opportunity for price improvement.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with Section 6(b)(5),[4] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that, although the Exchange is reducing the amount of time a specialist must expose an order for price improvement from thirty seconds to fifteen seconds, the proposal nevertheless benefits investors by mandating that they receive price improvement opportunities. The Commission believes that providing investors an opportunity for price improvement facilitates order interaction and enhances the execution of customer orders, which is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In addition, in approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.[5]

It is therefore, ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CSE–97–13) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10045 Filed 4–15–98; 8:45 am]

BILLING CODE 8010–01–M

Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated February 25, 1998.

[3] Securities Exchange Act Release No. 39720 (March 4, 1998), 63 FR 11942 (March 11, 1998).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Retirement Research Consortium Request for Applications (RFA) (Program Announcement No. SSA–ORES–98–1)

AGENCY: The Office of Research, Evaluation, and Statistics (ORES) of the Social Security Administration (SSA).

ACTION: Request for applications for a cooperative agreement to establish a Retirement Research Consortium (RRC).

SUMMARY: As currently legislated, the Old-Age and Survivors Insurance (OASI) and Disability Insurance trust funds are projected by the Social Security Board of Trustees to be insufficient by the year 2029 to pay all benefits. Seventy-five percent of the funds needed will be available but there will be a shortfall of about twenty-five percent of the funds needed to pay benefits under present law. The manner by which the Nation will react to or avoid this shortfall is arguably the most important policy decision of this decade. As authorized under Section 1110 of the Social Security Act, SSA announces the solicitation of applications for a cooperative agreement to create an RRC in order to inform the public and policymakers about policy alternatives and their consequences. Initially, the Consortium will be composed of two, university-based, multi-disciplinary Centers. The Centers will have a combined annual budget of $2.5 million for the first year and $2 million for subsequent years. SSA expects to fund these Centers for a period of 5 years, contingent on an annual review process and continued funding availability.

Purpose

This announcement seeks applications in support of the RRC that will serve as a national resource fostering high quality research, communication, and education. The Consortium's program purpose is to benefit the public through four tasks:

(1) *Research and evaluation.* The RRC will be expected to plan, initiate, and maintain a research program of high caliber. There will be special emphasis on retirement income policy and the protection of low-income workers and their families from economic loss due to retirement, death, or disability as well as issues related to long-range solvency. The RRC will also describe and evaluate retirement policies with an emphasis on OASI-related programs.

(2) *Dissemination.* The RRC will develop resources to inform the academic community, policymakers, and the public on issues concerning retirement policy and economic security during retirement.

(3) *Training and education.* The RRC will develop a professional training program including, but not limited to, graduate and postgraduate education; intramural exchanges; and formal instruction of policymakers which focuses on the issues of retirement policy.

(4) *Facilitation of data usage.* The RRC will facilitate research using SSA administrative data.

DATES: The closing date for submitting applications under this announcement is July 15, 1998.

FOR FURTHER INFORMATION CONTACT: To request an application kit, and for general (nonprogrammatic) information regarding the announcement or application package contact: E. Joe Smith, Grants Management Officer, SSA, Office of Acquisition and Grants, Grants Management Team, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. The fax number is (410) 966–

9310. The telephone numbers are E. Joe Smith, (410) 965–9503 (e-mail: joe.smith@ssa.gov), or Dave Allshouse, (410) 965–9262 (e-mail: dave.allshouse@ssa.gov).

For information on the program content of the announcement/application, contact: Dr. Steven Sandell, Director, Division of Policy Evaluation, ORES, SSA, 500 E St., SW, 9th Floor, Washington, DC, 20254–0001. The fax number is (202) 358–6187. The telephone number is (202) 358–6231 (e-mail: ores.dpe@ssa.gov).

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Part I—Supplementary Information

A. Eligible Applicants

SSA seeks applications from domestic universities or other post-secondary degree granting entities. For-profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any cooperative agreement recipient. Profit is considered as any amount in excess of the allowable costs of the award recipient.

In accordance with an amendment to the Lobbying Disclosure Act, popularly known as the Simpson-Craig Amendment, those entities organized under section 501(c)4 of the Internal Revenue Code that engage in lobbying are prohibited from receiving Federal cooperative agreement awards.

B. Type of Award

All awards made under this program will be made in the form of cooperative agreements. A cooperative agreement, as opposed to a grant, anticipates substantial involvement between SSA and the awardee during the performance of the project. A comprehensive annual review process will allow SSA to evaluate, recommend changes, and approve each Center's activities. This involvement may include collaboration or participation by SSA in the activities of the Centers as determined at the time of award. The terms of award are in addition to, not in lieu of, otherwise applicable guidelines and procedures.

C. Availability and Duration of Funding

1. ORES has available $2.5 million ($1.25 million for each of the two Centers) to fund the initial 12-month budget period of a proposed five-year cooperative agreement pursuant to this announcement. (Additional funding up to $1.5 million per year for related projects may become available for further support of the Centers selected under this announcement.)

2. Applicants must include separate budget estimates for each of the five years, if they expect funding levels to be substantially different in subsequent years.

3. The amount of funds available for the cooperative agreement in future years has not been established. Legislative support for continued funding of the Consortium cannot be guaranteed and funding is subject to future appropriations and approval by the Commissioner. SSA expects, however, that the Consortium will be supported during future fiscal years at an annual level of $2 million ($1 million per Center).

4. Nothing in this announcement precludes the possibility that the annual funds will be divided disproportionately between the two Centers. However, each Center should prepare a five-year proposal with a maximum budget of $5.25 million.

5. Additional funds up to $1.5 million per year may become available from SSA and/or other Federal agencies in support of Consortium projects.

6. Initial awards, pursuant to this announcement, will be made on or about October 13, 1998.

7. Awardee share of project cost—SSA will not provide total funding to any Center. Recipients of an SSA cooperative agreement are required to contribute a non-Federal match of at least 5 percent toward the total approved cost of each Center. The total approved cost of the project is the sum of the Federal share (maximum of 95 percent) and the non-Federal share (minimum of 5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

The amount awarded to a Center will be dependent on the receipt of a sufficient number of applications of high scientific merit. Although two awards are anticipated, nothing in this announcement restricts SSA's ability to make more (or less) than two awards, to make an award of lesser amount, or to add additional Centers to the RRC in the future.

D. Letter of Intent

Prospective applicants are asked to submit by June 1, 1998, a letter of intent that includes (1) This program announcement number and title; (2) a brief description of the proposed Center; (3) the name, postal and e-mail addresses, and the telephone and fax numbers of the Center Director; and (4) the identities of the key personnel and participating institutions. The letter of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The sole purpose of the letter of intent is to allow SSA staff to estimate the potential review workload and avoid conflicts of interest in the review. The letter of intent should be sent to: RRC Letter of Intent, Division of Policy Evaluation, Office of Research, Evaluation and Statistics, Social Security Administration, 500 E St., SW, 9th Floor, Washington, D.C. 20254–0001.

Part II—Establishment of a Research Consortium—Responsibilities of the Center and the Federal Government

A. Center Responsibilities

Priority Research Areas

The successful applicant shall develop and conduct a research and evaluation program that also appropriately balances training and dissemination activities directed toward understanding retirement policy and its current and future impact on the aged, especially lower and middle income Americans. Each Center should focus on several themes or areas directly relevant to retirement policy. SSA has identified seven priority research areas within the realm of retirement income policy on which applicants should focus and applications will be scored. These areas include:

1. *Social Security rules and retirement.* This includes incentives to retire from Social Security program rules and other factors; predicted actual ages of retirement; interactions between program features and work

disincentives; and the demographic, social, and economic characteristics of current and future retirees and their dependents. This also includes effects of changing the normal retirement age and the early eligibility age (including changes in the delayed retirement credit, the earnings test, and the penalty for early retirement) in particular, examining the labor demand for older workers; the health and functional capacity of older workers, with a specific emphasis on whether older workers can work longer given their greater life expectancy; the net fiscal impact on the Old-Age, Survivors, and Disability Insurance program; and the impacts on the labor supply of older workers.

2. *The macroeconomic and financial effects of changes in Social Security policy on national saving, investment, and economic growth.* This includes, but is not limited to, the intertemporal effects on capital formation, retirement savings, and the unified budget. This also includes the research and analysis of impacts related to the investment of the trust fund balances in equities.

3. *Social Security, private saving, and other retirement income.* This includes examining income from Social Security as currently legislated or as modified by reform proposals such as mandating savings; private savings including employer-provided pensions; individual assets; continued employment or other sources of retirement income. This also includes the analysis of the rates of return on alternative investments; measurements of risk; choice of discount rates for analyzing equity investments of varying risks; saving and investment choices by population subgroup; the effects of information on individuals' investment portfolio; and the trends in retirement income.

4. *Interactions of Social Security with other public and private programs.* This includes the impact of current OASI rules and potential reforms on the Disability Insurance program, in particular, and on public programs including, but not limited to, Supplemental Security Income, Medicare, private retirement plans, personal saving, and private insurance.

5. *International research.* This includes cross-country comparisons of social, demographic, and institutional differences, and highlights the lessons to be learned from other countries' social insurance experience.

6. *Distributional effects.* This encompasses differences in the effects of Social Security policy alternatives among workers and beneficiaries by age, race, ethnicity, nativity, gender, education, occupation, and income.

7. *Demographic and social change.* This includes changes in mortality, lifestyle, marital status, immigration, public perceptions, political attitudes, health, and labor force participation and includes their implications for retirement income policy.

Each Center will develop and disseminate knowledge about these and related issues. SSA realizes competent analysis of all priority research areas may be beyond the capacity of any one Center and thus each Center may wish to focus their individual resources and expertise on a subset of the areas listed above. Similarly, a Center may choose to concentrate on a few aspects of the priority research areas more strongly than others. The goal of the Consortium is to find two Centers which can symbiotically address a range of objectives discussed above without compromising the overall quality of research in the separate priority areas.

Tasks

Each Center will perform the following tasks:

1. *Research and evaluation.* Each Center will be expected to plan, initiate, and maintain a research program of high caliber. It must meet the tests of social science rigor and objectivity. The research will use state-of-the-art research methodology and have practical application to timely retirement income policy issues. The program will strive for respect from the academic and policy communities (over a broad range of the political spectrum) for its scientific quality, fairness, and policy relevance.

The research program should include supporting the work of members of the RRC staff and other affiliated researchers. In addition, it should provide intellectual leadership in the national research community by establishing links with a broad range of other scholars and organizations, through programs such as visiting and postdoctoral appointments, research assistantships, and a limited program of nonresident grants, for example. Joint research between Consortium and SSA researchers is encouraged as is collaboration with other organizations interested in retirement income policy.

The research program should include multi-disciplinary approaches to increase understanding of the issues beyond what is possible from analysis within the framework of a single discipline. The staff would include competency relevant disciplines such as economics, sociology, public policy/administration, demography, law, political science, finance, actuarial science, etc.

Planning and execution of the research program shall always consider the policy implications of research findings. However, it also is appropriate, for example, to engage in activities to make advances in research techniques, where they are needed for or related to primary objectives of the Consortium.

A group of nationally recognized scholars and practitioners (See Part II, Joint Responsibilities) shall periodically review the research agenda to assure its policy relevance, utility, and scope.

2. *Dissemination.* Making knowledge and information available to the academic and policy communities as well as the public (both beneficiaries and contributors) is to be another integral feature of each Center's responsibilities. The RRC will facilitate the process of translating basic behavioral and social research theories and findings into practical policy alternatives. The Centers will be expected to maintain a dissemination system of periodic newsletters, research papers, policy briefs, academic or trade journal articles, and occasional books. In addition, the Centers will be expected to organize conferences, workshops, lectures, seminars, and/or other ways of sharing current research activities, and findings. An annual conference on issues related to retirement income policy will be held by the Consortium with organizational responsibility rotating between the Centers. The hosting Center will also have the responsibility for publishing a book composed of papers delivered at the annual conference.

Applicants are encouraged to propose use of creative methods of disseminating data and information, such as using the Internet. Applications should show sensitivity to alternative dissemination strategies which may be appropriate for different audiences—such as policymakers, practitioners, the public, advocates, and academics. The research and dissemination will be nonpartisan and of value to all levels of policymaking. SSA reserves the right to review all publications created using Consortium funding.

3. *Training and education.* The RRC is expected to both train new scholars and educate academics and practitioners on new techniques and research findings on issues of retirement policy that impact the economic security of the aged, with special emphasis on protection of lower income workers and families. Each Center is expected to develop and expand a diverse corps of young scholars/researchers who focus their analytical skills on research and policy issues

central to the Consortium's mission. Training mechanisms should include seminar series, conferences, graduate courses, and mini-courses to be held in both Washington D.C./Baltimore and the RRC sites.

The Centers are expected to financially support the development and work of young scholars. For example, funding should be allocated to support graduate students, as research assistants and through research grants; Ph.D. candidates, through dissertation grants; and other research scholars through post-doctoral and visiting appointments. Additionally, the Centers will conduct training seminars for government analysts and policymakers on the Consortium's research findings and methodological advancements. Training exchanges of Consortium and government researchers should also be anticipated.

To assure the quality of its research, dissemination, and training, each Center must establish and maintain a formal tie with a university, including links with appropriate departments within that university. Each Center must have a major presence at a single site (university or city); however, alternative arrangements among entities and with individual scholars are encouraged and may be proposed.

4. *Facilitation of data usage.* SSA has been seeking ways to make administrative and other data more available to the research community. Such efforts are resource intensive and must adhere to clear privacy protection requirements. The RRC will work as an external resource to facilitate this objective. Specific areas in which the RRC should contribute include: Writing papers that further efforts to combine effectively data sharing and data privacy; developing documentation for administrative files; aiding researchers in obtaining administrative extracts for policy relevant research projects; developing sophisticated statistical techniques to mask micro data; aiding SSA staff in developing methodology and policy regarding linkages of administrative data with outside data sources; and providing, with SSA assistance, public use files that rely on data aggregates that cannot be used to identify individuals. In addition, it is SSA's goal to increase the sites at which outside researchers can use administrative data. The Centers are expected to work in conjunction with SSA and other Federal agencies and appropriate organizations to help develop mechanisms that enable additional sites to satisfy the legal and privacy requirements for outside researchers, who agree to specific privacy protections, to be able to access restricted-use data files.

B. Cooperative Agreement Responsibilities

1. *Center Responsibilities:* The Centers have the primary and lead responsibility to define objectives and approaches; to plan research, conduct studies, and analyze data; and publish results, interpretations, and conclusions of their work.

Occasionally, Center staff will be expected to comment on SSA research plans, provide critical commentary on research products, compose policy briefs, perform statistical policy analyses, and other quick-response activities to inform SSA's research, evaluation, and policy analysis function. In addition, Center Directors may be asked to aid in the development of SSA's internal research priorities. Funding for these as well as other related activities should be included in the budget narrative (Part III, Section A–8).

Without compromising academic freedom, Center staff will be expected to comply with special requests for administrative confidentiality in specific sensitive situations. The Centers shall make reasonable efforts to provide other researchers appropriate and speedy access to research data from this project and establish public use files of data developed under this award.

2. *SSA Responsibilities:* SSA will be involved with the Consortium in jointly establishing broad research priorities, planning strategies, and deliverable dates to accomplish the objectives of this announcement. SSA, or its representatives, will provide the following types of support to the Consortium:

a. Consultation and technical assistance in planning, operating and evaluating the Consortium's program activities.

b. Information about SSA programs, policies, and research priorities.

c. Assistance in identifying SSA information and technical assistance resources pertinent to the Centers' success.

d. Review of Consortium activities and collegial feedback to ensure that objectives and award conditions are being met.

e. SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, if the awardee materially fails to comply with the terms and conditions of the cooperative agreement, if technical performance requirements are not met, or if the project is no longer relevant to the Agency. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date.

f. SSA reserves the right to suspend funding for individual projects in process or in previously approved research areas or tasks after awards have been granted.

SSA encourages cooperative agreement applicants to become knowledgeable about SSA's operations as well as entitlements under its programs. Pamphlets and other public information may be obtained from any local Social Security field office or by calling 1–800–772–1213.

3. *Joint Responsibilities.*

Jointly with SSA, each Center will select approximately six nationally recognized scholars and practitioners who are unaffiliated with either Center to provide assistance in formulating the Center's research agenda and advice on implementation. Each Center shall select three scholars/practitioners and SSA will select three scholars/practitioners. Efforts will be made in selecting the scholars/practitioners to assure a broad range of academic disciplines and political viewpoints. The SSA Project Officer or some other SSA representative will participate in all meetings. Funded under this agreement, the scholars/practitioners will meet once or twice a year rotating between Washington, D.C., and the Consortium locations. On occasion, both Centers' scholars/practitioners will meet jointly to evaluate Consortium objectives and progress.

C. Special Requirements

Each Center Director must have a demonstrated capability to organize, administer, and direct the Center. The Director will be responsible for the organization and operation of the Center and for communication with SSA on scientific and operational matters. The Director must also have a minimum time commitment of 30 percent to the Consortium Cooperative Agreement. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as Directors. A list of previous grants and cooperative agreements held by the Director shall be submitted including the names and contact information of each grant's and cooperative agreement's administrator.

In addition to the Director, skilled personnel and institutional resources capable of providing a strong research and evaluation base in the priority areas specified must be available. The university and pertinent departments must show a strong commitment to the

Consortium's support. Such commitment may be provided as dedicated space, salary support for investigators or key personnel, dedicated equipment or other financial support for the proposed Center.

Each Center should be conceptualized and defined by its integrative, multi-disciplinary nature and need not be limited by geographical or departmental boundaries. A research team may consist of investigators or institutions that are geographically distant, to the extent that the research design requires and accommodates such arrangements. Nothing in this announcement precludes non-academic entities from being affiliated with an applicant.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

In general, SSA seeks organizations with demonstrated capacity for providing quality policy research and evaluation, training, and working with government policymakers. Applicants should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and the requirements described in the announcement. The application should specify in detail how administrative arrangements will be made to minimize start-up and transition delays. Applications which do not address all four major tasks discussed in Center Responsibilities in Part II will not be considered for an award.

It is anticipated that the applicant will have access to additional sources of funding for some projects and arrangements with other organizations and institutions. The applicant (including the Center Director and other key personnel) shall make all current and anticipated related funding arrangements (including contact information for grant/contract/cooperative agreement administrators) explicit in an attachment to the application (Part IV, Section B–12). As part of the annual review process, this information will be updated and reviewed to limit duplicitous funding for Center projects.

A. Content and Organization of Technical Application (See "Components of a Complete Application," Part IV, Section B)

The application must begin with the required application forms and a three-page (double spaced) overview and summary of the application. Staff resumes should be included in a separate appendix. The core of the application must contain eight sections, presented in the following order:

(1) A brief (not more than 10 pages) background analysis of the key retirement policy issues and trends with a focus on the primary research themes of the proposed Center. The analysis should discuss concisely, but comprehensively, important priority research issues and demonstrate the applicant's grasp of the policy and research significance of recent and future social, economic, political, and demographic trends.

(2) A research and evaluation prospectus for a five-year research agenda, outlining the major research themes to be investigated over the next five years. In particular, the prospectus will describe the activities planned for the priority research areas and other additional research topics proposed by the applicant. The prospectus should discuss the kind of research activities that are needed to anticipate future policy debates on OASI and the role of the proposed Center in promoting those activities. The prospectus should follow from the background analysis section. It may, of course, also discuss research areas and issues that were not mentioned in the analysis if the author(s) of the application feel there have been gaps in past research, or that new factors have begun to affect or soon will begin to affect national retirement policy.

The prospectus shall include detailed descriptions of individual research projects that will be expected in the Center's first year of operation. It also should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that contains simply an ad hoc categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably.

Note: Once a successful applicant and the outside scholars/practitioners have been selected, they and SSA will review the research agenda and determine research priorities. This may include the addition, limitation, or removal of proposed research projects. After review, each Center will submit to SSA a revised research plan that summarizes the deliberations and priorities. The research plan will be periodically reviewed and revised as necessary. The application should discuss a proposed research planning process, including involvements of the outside scholars/practitioners, SSA, and other advisors and participants in the Consortium.

(3) A prospectus for dissemination should include proposed mechanisms for reaching a broad audience of academics and researchers, policymakers, and the public. Dissemination plans should detail proposed publications, conferences, workshops, and training seminars.

(4) A prospectus for training and education should include proposed training and educational strategies to meet the goals described in Part II, Section A, Task 3.

(5) A prospectus for facilitation of data usage demonstrating a broad knowledge of administrative data and the legal and institutional constraints facing public data release. In addition, it should include a discussion of the technical expertise of Center staff and proposed mechanisms to facilitate the sharing of data.

(6) A staffing and organization proposal for the Center including an analysis of the types of background needed among staff members, the Center's organizational structure, and linkages with the host university and other organizations. In this section, the applicant should specify how they will assure a genuinely multi-disciplinary approach to research, and where appropriate, identify the necessary links to university departments, other organizations and scholars engaged in research and government policy making.

The applicant should identify the Center Director and key senior research staff. Full resumes of proposed staff members shall be included as a separate appendix to the application. The time commitment to the Center and other commitments for each proposed staff member shall be indicated. Note that once the cooperative agreement has been awarded, changes in key staff will require approval from SSA. The kinds of administrative and tenure arrangements, if any, the Center proposes to make should also be discussed in this section. In addition, the author(s) of the application and the role which he/she (they) will play in the proposed Center must be specified.

This section shall discuss the financial arrangements for supporting research assistants, dissertation

fellowships, affiliates, resident scholars, etc. The discussion should include the expected number and type of scholars to be supported and the level of support anticipated.

If the applicant envisions an arrangement of several universities or entities, this section should describe the specifics about the relationships, including leadership, management, and administration. They should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed.

The application also should discuss the role, selection procedure, and expected contribution of the outside scholars/practitioners (See Part II, Joint Responsibilities).

(7) An organizational experience summary of past work at the university or institution proposed as the location (or the host) of the Center that relates directly or indirectly to the research priorities of this request. This discussion should include more than a listing of the individual projects completed by the individuals who are included in the application. It should provide a sense of institutional commitment to policy research on issues involving retirement policy. Where specific individuals are proposed for the staff of the Center, it is legitimate to discuss their past research, whether or not it took place at the institution proposed to be the location of the Center. The application must list in an appendix appropriate recent or current research projects, with a brief research summary, contact person references, and address and telephone numbers of references.

This section should also discuss the experience of the research staff in working with the government agencies and their demonstrated capacity to provide policy relevant support to these agencies.

(8) A budget narrative which links the research, training, dissemination, and data-facilitation program to the Center's funding level. The budget should, to the degree possible, offer separate cost estimates for the individual research areas and projects proposed in the research prospectus. Funding should also be allocated to address occasional SSA requested activities (described in Part II, Section B–1). This section should also discuss how the five-year budget supports proposed research, training, dissemination, and data-facilitation activities and should link the first year of funding to a five-year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans.

The availability, potential availability or expectation of other funds (from the host university, other universities, foundations, other Federal agencies, etc.) and the uses to which they would be put, should be documented in this section. When additional funding is contemplated, applicants shall note whether the funding is being donated by the host institution, is in-hand from another funding source, or will be applied for from another funding source. Formal commitments for the 5 percent, non-federal, minimum budget share should be highlighted in this section.

Seeking additional support from other sources is encouraged. However, funds pertaining to this announcement must not directly duplicate those received from other funding sources.

B. Review Process and Funding

In addition to any other reviews, an independent review panel consisting of at least three qualified persons will be formed. Each panelist will objectively review and score the cooperative agreement applications using the evaluation criteria listed in Part III, Section C below. The panel will recommend to SSA two Centers based on (1) the application scores; (2) the feasibility and adequacy of the project plan and methodology; and (3) how the Centers would jointly meet the objectives of the Consortium. The Commissioner of Social Security will consider the panel's recommendations when awarding the cooperative agreements. Although the results from the independent panel reviews are the primary factor used in making funding decisions, they are not the sole basis for making awards. The Commissioner will consider other factors as well (such as duplication of internal and external research effort) when making funding decisions.

All applicants must use the guidelines provided in the SSA application kit for preparing applications requesting funding under this cooperative agreement announcement. These guidelines describe the minimum amount of required project information. However, when completing Part III—Program Narrative, Form SSA–96–BK, please follow the guidelines under Part III, Section A, above. Disregard instructions provided on pages 3, 4, and 5 of the SSA Federal Assistance Application Form SSA–96–BK.

All awardees must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR, part 401) as well as provide specific safeguards surrounding client information sharing, paper/computer records/data, and other issues potentially arising from administrative data.

SSA reserves the option to discuss applications with other Federal or State staff, specialists, knowledgeable persons, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision.

C. Selection Process and Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application described in Part III, Section A, above. The application should be prepared in the format indicated by the outline described in The Components of a Complete Application (i.e., Part IV, Section B).

Selection of the successful applicants will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below.

The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(a) Quality of the background analysis. (See Part III, Section A–1) (10 points)

Applications will be judged on whether they provide a thoughtful and coherent discussion of political, economic, social, and demographic trends influencing retirement. Reviewers will judge applicants' abilities to discuss the past, present, and future role of government programs and polices which affect these trends. Applications should tie the trends and influences discussed to their proposed research agenda.

(b) Quality of the research and evaluation prospectus. (See Part III, Section A–2) (30 points)

Reviewers will judge this section on whether the research agenda is scientifically sound and policy relevant. They also will consider whether the applicant is likely to produce significant/seminal contributions to their proposed research areas and how closely the proposed projects fit the

objectives for which the applications were solicited.

The application will be judged on the breadth and depth of the applicant's commitment to research and evaluation of the priority areas described in Part II, Section A. The discussion and research proposed must address at least three priority research areas. Applicants will generally receive higher scores for addressing more than three priority research areas. However, a strong proposal focusing on three areas will outscore one which is broad and weakly defined. Applicants with additional insightful research proposals will also score higher. Concise plans for research projects in the near term (one or two years) as well as a five-year agenda are important.

Reviewers will rate applications on the contents of the plans to conduct policy relevant research. In addition, they will be judged on their relevance to government activities. Reviewers will also take into consideration SSA priorities and funded or anticipated projects. In the first year, SSA is particularly interested in research on issues related to solvency included in priority research areas 1–3 (Part II, Section A).

(c) Dissemination; training and education; and facilitation of data usage. (See Part III, Section A–3, A–4, and A–5) (20 points)

Reviewers will evaluate strategies for dissemination of research and other related information to a broad and disparate set of academic, research, and policy communities as well as to the public. Reviewers will also evaluate whether the appropriate dissemination method is being proposed for targeted audiences of academics and researchers, policymakers, and the public. Proposed strategies that increase dissemination across Centers and other organizations conducting retirement research will also receive higher ratings.

The evaluation of the training and evaluation prospectus will include an assessment of plans to enhance the training of graduate students and young scholars through direct financial support as well as exposure to policy research. In addition, reviewers will evaluate proposed strategies for educating and training policymakers and practitioners on issues of retirement.

The scoring of the prospectus for facilitation of data usage will include a review of the activities planned as well as staff and management expertise and experience. Applicants should also demonstrate an understanding of the legal and institutional constraints involved with SSA administrative, earnings, and tax data.

(d) Quality of the staffing proposal and proposed organizational arrangements. (See Part III, Section A–6 and A–7) (30 points)

Reviewers will judge the applicant's Center Director and staff on research experience, demonstrated research skills, administrative skills, public administration experience, and relevant policy making skills. An additional criterion will be the Center's demonstrated potential to act as a conduit between basic and applied behavioral and social science research and policy analysis/evaluation. Both the evidence of past involvement in related research and the specific plans for seeking applied outcomes described in the application shall be considered part of that potential. Reviewers may consider references from grant/cooperative agreement administrators on previous grants and cooperative agreements held by the proposed Center Director or other key personnel. Director and staff time commitments to the Center also will be a factor in evaluation. Whether the applicant can maintain a single location for research, teaching, and scholarship is an important consideration. Reviewers will evaluate the affiliations of proposed key personnel to ensure the required multi-disciplinary nature of the Consortium is being fulfilled. Higher scores will generally be given to those Centers which include active participation by a multi-disciplinary research staff. Furthermore, reviewers will rate the applicant's pledge and ability to work in collaboration with other scholars and government employees in search of similar goals.

Applicants will be judged on the nature and extent of the organizational support for research, mentoring scholars, dissemination, facilitation of data usage, and in areas related to the Center's central priorities and this request. Reviewers will evaluate the commitment of the host university (and the proposed institutional unit that will contain the Center) to assess its ability to support all four of the Center's major activities: (1) Scholarly, policy relevant research; (2) dissemination; (3) education and training; (4) facilitation of data usage. Reviewers also will evaluate the applicant's demonstrated capacity to work with a range of government agencies.

(e) Appropriations of the budget to carry out the planned staffing and activities. [See Part III, Section A–8] (10 points)

Reviewers will consider whether (1) the budget assures an efficient and effective allocation of funds to achieve the objectives of this solicitation, and (2) the applicant has additional funding from other sources, in particular, the host university. Applications which show funding from other sources that supplement funds from this cooperative agreement will be given higher marks than those without financial support.

Panel Recommendations. Once each application is scored and ranked, the panel will then review the top applicants and recommend two Centers which, when combined, best symbiotically address the range of responsibilities described in Part II. Although there may be significant overlap between Centers, the panel will choose two Centers which together cover a broad range of the priority research areas; and best address the Consortium tasks of dissemination, training and education, and facilitation of data usage.

Part IV—Application Forms, Completion and Submission

A. Availability of Application Forms

To obtain an application kit which contains the prescribed forms for funding projects under this announcement, contact: Grants Management Team, Office of Acquisition and Grants, Social Security Administration, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21207–5279. The fax number is (410) 966–9310. The telephone numbers are E. Joe Smith (410) 965–9503 (e-mail: joe.smith@ssa.gov) or Dave Allshouse (410) 965–9262 (e-mail: dave.allshouse@ssa.gov).

When requesting an application kit, the applicant should refer to the program announcement number SSA–ORES–98–1 and the date of this announcement to ensure receipt of the proper application kit.

B. Components of a Complete Application

A complete application package consists of one original, signed and dated application, plus at least two copies, which include the following items in order:

1. Cover Sheet;
2. Project Abstract/Summary (not to exceed three pages);
3. Table of Contents;
4. Part I (Face Sheet)—Application for Federal Assistance (Standard Form 424);
5. Part II—Budget Information—Sections A through G (Form SSA–96–BK);
6. Budget Justification for Section B—Budget Categories;

7. Proof of non-profit status, if applicable;

8. Copy of the applicant's approved indirect cost rate agreement, if appropriate;

9. Part III—Project (Program) Narrative. Please disregard instructions provided on pages 3, 4, and 5 of the SSA Federal Assistance Application Form SSA–96–BK. The program narrative should be organized in seven sections:

(a) Background Analysis,

(b) Research and Evaluation Prospectus,

(c) Dissemination Prospectus,

(d) Training and Education Prospectus,

(e) Facilitation of Data Usage Prospectus,

(f) Staffing Proposal Including Staff Utilization, Staff Background, and Organizational Experience

(g) Budget Narrative

10. Part IV—Assurances;

11. Required Certifications;

12. Any appendices/attachments; and

13. Supplement to Section II—Key Personnel.

Staple each copy of the application securely (front and back if necessary) in the upper left corner. Please DO NOT use or include separate covers, binders, clips, tabs, plastic inserts, books, brochures, videos, or any other items that cannot be readily photocopied.

C. Application Submission

These guidelines should be followed in submitting applications:

—All applications requesting SSA funds for cooperative agreement projects under this announcement must be submitted on the standard forms provided in the application kit. NOTE: Facsimile copies will not be accepted.

—The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

—Number of copies: The package should contain one original, signed and dated application plus at least two copies. Ten additional copies are optional and will expedite processing of the application. A disk copy of the Abstract and the Program Narrative (in WordPerfect 5.2 format) would also be helpful to SSA but are optional.

—Length: Applications should be brief and concise as possible, but assure successful communication of the applicant's proposal to the reviewers. The Project Narrative portion of the application (Part III) may not exceed 150 double spaced pages (excluding the resume and outside funding appendices), typewritten on one side using standard (8½' x 11') size paper and 12 point font. Attachments that support the project narrative count within the 150 page limit. Attachments not applicable to the project narrative do not count toward this page limit.

—Attachments/Appendices, when included should be used only to provide supporting documentation. Brochures, videos, etc., should not be included because they are not easily reproduced and are therefore inaccessible to reviewers.

—In item 11 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–ORES–98–1). The applicant also is encouraged to select a SHORT descriptive project title.

—On all applications developed jointly by more than one organization, the application must identify only one university as the lead organization and the official applicant. The other(s) can be included as co-participants, subgrantees or subcontractors.

Applications must be mailed or hand delivered to: Grants Management Team, Office of Acquisition and Grants, DCFAM, Social Security Administration, Attention: SSA–ORES–98–1, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207–5279.

Hand delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received at the above address on or before the deadline date; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by July 15, 1998. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing.

Applications that do not meet the above criteria are considered late applications. SSA will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants. SSA will notify each late applicant that its application will not be considered.

D. Notification

SSA will use Form SSA–3966 PC (a double postcard) to acknowledge receipt of application forms. Please complete the top and bottom parts of the double postcard which is included in the application kit and, on the franked sided of the postcard, enter the name and address of the person to whom the acknowledgment is to be sent. Include Form SSA–3966 PC with the original copy of the application forms. If you do not receive acknowledgment of your application within eight weeks after the deadline date, please notify SSA.

Paperwork Reduction Act

This notice contains reporting requirements. However, the information is collected using a Federal Assistance Application Form SSA–96–BK, which has the Office of Management and Budget clearance number 0960–0184.

Executive Order 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance: Program No. 96.007, Social Security—Research and Demonstration)

Dated: April 10, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–10206 Filed 4–15–98; 8:45 am]

BILLING CODE 4190–89–P

DEPARTMENT OF STATE

[Public Notice No. 2768]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the eight letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 36(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: March 27, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

United States Department of State

Washington, D.C. 20520

MAR 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification for export of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of four (4) Hawker 800XP Aircraft to the Ministry of National Defense, South Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-101-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves a sale to The Netherlands of ten (10) Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) Targeting Pods.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-2-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves a technical assistance agreement for the development of the Norwegian Advanced Surface-to-Air Missile System (NASAMS).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-20-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 18 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of 22,973 Generation III Image Intensification Tubes to Australia for use by the Australian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-21-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 10 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Norway.

The transaction described in the attached certification involves provision for specific mission technical data and assistance to the Delta II space launch vehicle and its relation to commercial communications spacecraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-36-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 10 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves a technical assistance agreement with Canada for the design and development of optical inter-satellite link terminals (OISLs) for communications satellites.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-37-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services to be sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves a Manufacturing License Agreement with France for the VT-1 Air Defense Missile.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-41-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

MAR 24 1998

Dear Mr. Speaker:

Pursuant to section 36.(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves a technical assistance agreement with Japan to support manufacture and assembly of the Univac Model U-1600 computer.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-42-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98–10060 Filed 4–15–98; 8:45 am]
BILLING CODE 4710–25–C

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE AND TIME: Friday, May 1, 1998, 9:00 a.m.–5:00 p.m.; Saturday, May 2, 1998, 9:00 a.m.–12:00 p.m.

PLACE: Radisson Resort, 500 Padre Boulevard, South Padre Island, Texas 78597.

MATTERS TO BE CONSIDERED: FY 1998 grant requests, internal Institute business matters.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON FOR FURTHER INFORMATION:
David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 98–10185 Filed 4–13–98; 4:07 pm]

BILLING CODE 6820–SC–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions for the 1998 Annual GSP Product and Country Eligibility Practices Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the 1998 annual GSP product and country eligibility practices review.

SUMMARY: The deadline for the submission of petitions for the 1998 Annual GSP Product and Country Eligibility Practices Review is 5:00 p.m., Tuesday, June 16, 1998.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Announcement of 1998 Annual GSP Product and Country Eligibility Practices Review

The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified by a **Federal Register** notice. Notice is hereby given that, in order to be considered in the 1998 Annual GSP Product and Country Eligibility Practices Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., Tuesday, June 16, 1998. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner.

The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et. seq.*), as amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations. Section 505 of the Trade Act states that duty-free treatment provided under the GSP shall not remain in effect after June 30, 1998. If the program expires without reauthorization on that date, the 1998 Annual GSP review will be conducted according to a schedule to be issued in the **Federal Register** if and when the program is reauthorized. The review will be based on those petitions that are submitted prior to the June 16 deadline and accepted for review by the GSP Subcommittee.

A. 1998 GSP Annual Product Review

Interested parties or foreign governments may submit petitions: (1) To designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to waive the competitive need limits for individual beneficiary developing countries with respect to specific GSP eligible articles; and (4) to otherwise modify GSP coverage. As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the Harmonized Tariff Schedule (HTS) subheading in which the product is classified.

B. 1998 GSP Annual Country Eligibility Practices Review

Interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462 (b) and (c)). Such petitions must comply with the requirements of 15 CFR 2007.01(b).

C. Submissions of Petitions and Requests

Petitions to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. An original and fourteen (14) copies of each petition must be submitted in English. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. Petitions submitted as "business confidential" must conform to 15 CFR 2003.6 and other qualifying information submitted in confidence must conform to 15 CFR 2007.7. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential"). Furthermore, interested parties submitting petitions that request action with respect to specific products should list on the first page of the petition the following information: (1) The requested action; (2) the HTS subheading in which the product is classified; and (3) if applicable, the beneficiary country.

All such submissions must conform to the GSP regulations which are set forth in 15 CFR Part 2007. The regulations are also included in "A Guide to the U.S. Generalized System of Preferences (GSP)" (August 1991) ("GSP Guide"). Petitioners are strongly advised to review the GSP regulations. Submissions that do not provide all information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. These requirements will be strictly enforced. Petitions with respect to waivers of the competitive need limitations must meet the information requirements for product addition requests in section 2007.1(c) of the GSP regulations. A model petition format is available from the GSP Subcommittee and is included in the GSP Guide. Petitioners are requested to use this

model petition format so as to ensure that all information requirements are met.

Only the public versions of the submissions will be available for public inspection and only by appointment. Appointments to review petitions may be made by contacting Ms. Brenda Webb (Tel. 202/395–6186) of the USTR Public Reading Room. The hours of the Reading Room are 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–10141 Filed 4–15–98; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Route Structures Over the Grand Canyon National Park (GCNP); Meeting

ACTION: Notice of meeting.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) announce that a meeting of interested parties will take place on April 28–29 in Flagstaff, Arizona to discuss route structures over the Grand Canyon National Park (GCNP). This meeting will be open to the public. This notice serves to inform the public of the meeting dates.

DATES AND LOCATIONS: Interested parties will meet on April 28, 1998, beginning at 10 a.m., in conference rooms in the LaQuinta Inn and Suites, 2015 South Beulah, Flagstaff, Arizona, telephone: (520) 556–8666. The starting time for the meeting on April 29 will be announced at the April 28 meeting.

FOR FURTHER INFORMATION CONTACT: Carla Mattix, Office of the Solicitor, U.S. Department of the Interior, 1849 C St., NW, Washington, DC 20240, telephone: (202) 208–7957, or Linda Williams, Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591, telephone: (202) 267–9685.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Flagstaff meeting is to discuss the commercial air tour route structure for GCNP and provide a forum for interested parties to consider a tentative route through the Sanup Flight-free Zone that has been identified by NPS as a viable air tour route.

The FAA is requesting by letter, the attendance of designated representatives of various groups, including air tour operators, local government, Native Americans, and environmentalists. Each group's designated representative will be asked to sit on a panel to discuss the proposed route structures.

Meeting Protocol

The April 28–29 meeting will be open to the public. However, the following rules apply:

Only designated representatives will be seated on the panel, and be allowed to participate in the discussion. However, any representative may call upon another individual to elaborate on a relevant point, and the NPS and FAA advisors to the panel have the full right to the floor and may raise and address appropriate points. Any other person attending the meeting may address the panel if time permits and may file statements with the panel for its consideration.

Issued in Washington, DC on April 10, 1998.

Joseph A. Hawkins,

Director Office of Rulemaking.

[FR Doc. 98–10072 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collections of Information by the Office of Management and Budget

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA) hereby gives notice that it has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). FRA requests that OMB authorize the collection of information identified below on or before April 13, 1998, for 180 days after the date of issuance of this notice in the **Federal Register**. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling FRA's clearance officers, Robert Brogan (telephone number (202) 632–3318) or Maryann Johnson (telephone number (202) 632–3226). Comments and questions about the ICR identified below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for FRA, Washington, D.C. 20503.

Title: PTC System-Technology/ Functionality Questionnaire.

OMB Number: 2130-new.

Frequency: One-time.

Affected Public: Railroad Industry.

Number of respondents: 10.

Estimated Time Per Respondent: 4 hours.

Total Burden: 40 hours.

Description: The Railroad Safety Advisory Committee (RSAC) workgroup charged with investigating Positive Train Control (PTC) is requesting information from the railroad industry concerning the technologies and functionality of the various PTC products/programs that either exist or are being planned for development. Information collected will be used by the RSAC PTC Implementation Task Force in facilitating the implementation of PTC on the Nation's railroads.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on April 10, 1998.

Maryann Johnson,

Information Collection Budget Officer.

[FR Doc. 98–10129 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3665 (PDA–21(R))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Tennessee Hazardous Waste Transporter Fee and Reporting Requirements

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

ACTION: Public notice and invitation to comment; correction.

SUMMARY: This notice corrects an error in the **DATES** section of the public notice and invitation to comment published on April 9, 1998 (63 FR 17479) and clarifies that an administrative determination on the application by the Association of Waste Hazardous Materials Transporters will be issued by RSPA's Associate Administrator for Hazardous Materials Safety.

DATES: Comments received on or before May 26, 1998, and rebuttal comments received on or before July 8, 1998, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

Issued in Washington, DC on April 10, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–10043 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 1, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION:

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
4844–M		Kidde-Graviner Ltd., Colnbrook, Slough, Berks, UK (See Footnote 1)	4844
9419–M		FIBA Technologies, Inc., Westboro, MA (See Footnote 2)	9419
10458–M		Marsulex Inc., Sudbury, ON (See Footnote 3)	10458
11483–M		Autoliv, Autoflator AB, Vargarda, SW (See Footnote 4)	11483
11667–M		Weldship Corporation, Bethlehem, PA (See Footnote 5)	11667
11790–M		United States Enrichment Corporation, Bethesda, MD (See Footnote 6)	11790
11872–M	RSPA–1997–2584	Polymet Alloys, Inc., Saginaw, AL (See Footnote 7)	11872

(1) To modify the exemption to provide for rail, air and cargo vessel as additional modes of transportation for use in transporting non-DOT specification foreign made steel cylinders.

(2) To modify the exemption to provide for minimum wall thickness to be reduced to 0.299 inch for DOT Specification 3AAX or 3T cylinders and increase the quantity of cylinders retested to 1,000 annually.

(3) To modify the exemption to provide for Sulfur dioxide, Division 2.2 as an additional class of material for transportation in DOT Specification 111A100W2 tank cars.

(4) To modify the exemption to provide for an additional designed non-DOT specification, refillable, high pressure cylinders charged with Division 2.2 material for transportation as part of modules for automobile airbag systems.

(5) To authorize the modification of personnel qualifications for retesting of DOT–3AAX and 3T cylinders.

(6) To modify the exemption to provide for alternative material to be used in tubing of non-specification cylinders similar to DOT 5A and 5B specification cylinder without required markings for use in transporting uranium hexafluoride, Class 7.

(7) To modify exemption to provide for tarp covered vehicles for transportation of water reactive, solid, Division 4.3 in flexible intermediate bulk containers.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 10, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 98–10070 Filed 4–15–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 18, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 10, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12051–N	RSPA–1998–3685	General American Trans. Corp., Chicago, IL.	49 CFR 180.509(e)	To authorize the use of acoustic emission non-destructive testing for structural integrity inspections and testing of railroad tank cars (Mode 2.)
12052–N	RSPA–1998–3686	Engineered Carbons, Inc. Borger, TX.	49 CFR 174.67(i), 174.67 (i) & (j).	To authorize rail cars to remain connected during the preheating process of various hazardous materials without the physical presence of an unloader. (Mode 2.)
12053–N	RSPA–1998–3687OZ	Technology, Rathdrum, ID	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of Hydro-carbon Blend B refrigerant gas, Division 2.1, in non-DOT specification containers similar to a DOT2Q cans with overpack. (Modes 1, 2, 3.)
12054–N	RSPA–1998–3688	Gulf & Caribbean Cargo, Inc., Fort Lauderdale, FL.	49 CFR 172.101, Col. 9B	To authorize the transportation in commerce of explosives, Division 1, that are forbidden or exceed the quantity limitation for transportation by air. (Mode 4.)
12056–N	RSPA–1998–3730	GenCorp Aerojet, Sacramento, CA.	49 CFR 173.226, 173.336	To authorize the transportation in commerce of Division 6.1 material and Division 3.3 material, in propellant tanks designed to a military specification. (Modes 1, 3.)

[FR Doc. 98–10071 Filed 4–15–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 120X)]

Union Pacific Railroad Company—Abandonment and Discontinuance of Service Exemption—in Warren County, IA

On March 27, 1998, Union Pacific Railroad Company (UP) 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: (1) abandon a line of railroad owned by UP known as the Carlisle Branch, extending from milepost 368.3 near Carlisle, IA, to milepost 379.13 near Indianola, IA, a distance of 10.83 miles; and (2) discontinue operations over a portion of the Carlisle Branch from milepost 379.13 to the end of the line at milepost 379.98 in Indianola, a distance of 0.85 mile, a total distance of 11.48 miles in Warren County, IA. The line traverses U.S. Postal Service Zip Code 50125. There is one non-agency rail station on the line at Indianola at milepost 379.7. The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 15, 1998.

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 a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 6, 1998. 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–33 (Sub-No. 120X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before May 16, 1998.

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 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.

Decided: April 8, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10118 Filed 4–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 10, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 18, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Type of Review: Extension.

Title: Exceptions to the Notice and Reporting Requirements of Section 6033(3)(1) and the Tax Imposed by Section 6033(e)(2).

Description: Review Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Respondents: Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents/ Recordkeepers: 15,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 10 hours.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 150,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–10099 Filed 4–15–98; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 10, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 18, 1998 to be assured of consideration.

Bureau of the Public Debt (PD)

Special Request: In order to make the forms described below available for use by the Federal Reserve Banks by July 1, 1998, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval by no later than May 1, 1998.

OMB Number: New.

Form Number: PD F 5385.

Type of Review: New collection.

Title: Certificate of Appointment and Request for Payment of Series I Savings Bonds to the Representative of the Estate of an Incompetent or Minor.

Description: PD F 5835 is used by court-appointed or other authorized individual to request payment on behalf of an incompetent, minor, or other person under a legal disability.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 330 hours.

OMB Number: New.

Form Number: PD F 5386.

Type of Review: New collection.

Title: Request for Reissue of Series I Savings Bonds by the Representative of the Estate of an Incompetent or Minor.

Description: PD F 5386 is used by court-appointed or other authorized individual to request reissue on behalf of an incompetent, minor, or other person under a legal disability.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 330 hours.

OMB Number: New.

Form Number: PD F 5387.

Type of Review: New collection.

Title: Request for Reissue of Series I United States Savings Bonds.

Description: PD F 5387 is used to request reissue to add co-owner or beneficiary, correct error, or show change of name.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 1,500 hours.

OMB Number: New.

Form Number: PD F 5394.

Type of Review: New collection.

Title: Application for Disposition of Series I Savings Bonds After the Death of the Registered Owner(s).

Description: PD F 5394 is used to distribute Series I Savings Bonds after the death of the registered owner(s).

Respondents: Individual or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 750 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–10100 Filed 4–15–98; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 8, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before May 18, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1057.

Form Number: IRS Form 8800.

Type of Review: Extension.

Title: Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts.

Description: Form 8800 is used by partnerships, REMICs, and by certain trusts to request an additional extension of time (up to 3 months) to file Form 1065, Form 1041, or Form 1066. Form 8800 contains data needed by the IRS to determine whether or not a taxpayer qualifies for such an extension.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 13 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,210 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–10101 Filed 4–15–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs

Office of the Comptroller of the Currency

[Docket No. 98–07]

Foreign Treatment of United States Financial Institutions

AGENCIES: Office of the Comptroller of the Currency (OCC) and Office of the Assistant Secretary for International Affairs, U.S. Treasury.

ACTION: Notice of study and request for comments.

SUMMARY: Section 3602 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, requires that a quadrennial report on the foreign treatment of United States financial institutions be submitted to Congress by the Department of the Treasury, working with other agencies. This, the third report, is due no later than December 1, 1998. This report will describe the extent to which foreign countries deny national treatment to United States banking organizations and securities companies. Public comment is requested on significant denials of national treatment to United States banking organizations and securities companies.

DATES: Comments must be delivered on or before May 18, 1998.

ADDRESSES: Comments regarding banking market activities should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219; Attention: Docket No. 98–07. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to Regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the same location.

Comments regarding securities market activities should be directed to: Office of International Banking and Securities Markets, Office of the Assistant Secretary for International Affairs, Room 1064, U.S. Treasury Department, Washington, D.C. 20220; Attention: National Treatment Study Director (Securities). In addition, comments may be sent by facsimile transmission to FAX number (202) 622–1254.

These comments will be available for public inspection and photocopying during the hours that the Treasury Department Library is open (by appointment) to members of the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220. Appointments can be made by calling the Treasury Library at (202) 622–0045.

FOR FURTHER INFORMATION CONTACT: Wilbur Monroe, Project Coordinator, Report on Foreign Treatment of United States Financial Institutions, Office of International Banking and Securities Markets, Treasury Department (202 622–1252); Arthur McMahon, Study Director (Banking), International Banking and Finance, Office of the Comptroller of the Currency (202–874–4730); or Warren Gorlick, Study Director (Securities), Office of International Banking and Securities Markets, Treasury Department (202–622–2263).

SUPPLEMENTARY INFORMATION: In 1979, 1984, 1986, 1990, and 1994, Treasury, working with other interested departments and agencies, prepared reports on the treatment of U.S. commercial banks by foreign governments. (The 1986, 1990 and 1994 reports also covered securities markets.)

In 1988, Congress passed the Financial Reports Act as part of the Omnibus Trade and Competitiveness Act, which in section 3602 requires that Treasury, working with other agencies, report to the Congress on (1) the foreign countries from which foreign financial services institutions have entered into the business of providing financial services in the United States, (2) the kinds of financial services which are being offered, (3) the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and (4) the efforts undertaken by the United States to eliminate such discrimination. The first report prepared in 1990 focused on those countries in which there were significant denials of national treatment that had an impact on United States financial firms. The second report in 1994 added several newly emerging markets that had not been the subject of the earlier report. The 1998 report will update work done in previous reports but will focus more selectively on countries where continued denials in the provision of national treatment remain, or where significant improvements have occurred since the last report.

The policy of providing foreign financial firms an opportunity to compete on an equal basis with local domestic firms is known as "national treatment" or "equality of competitive opportunity."

Treasury welcomes comments on any aspect of national treatment, and invites specific comments on:

(a) Those markets which deny national treatment to U.S. banking organizations and securities companies in banking and/or securities activities;

(b) Any laws, enacted or pending, regulations, restrictions, or practices which result in the denial of equality of competitive opportunity;

(c) The seriousness of such obstacles to business operations; and

(d) Significant examples of denials in the provision of national treatment since June 30, 1994.

Dated: April 8, 1998.

Timothy F. Geithner,

Assistant Secretary for International Affairs, U.S. Treasury Department.

Dated: April 8, 1998.

Susan Krause,

Senior Deputy Comptroller for International Affairs, Office of the Comptroller of the Currency.

[FR Doc. 98–10063 Filed 4–15–98; 8:45 am]

BILLING CODE 4810–25–P, 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notices 437, 438 and 466

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notices 437, 438 and 466, Notice of Intention to Disclose.

DATES: Written comments should be received on or before June 15, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notices should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Intention to Disclose.

OMB Number: 1545–0633.

Notice Number: Notices 437, 438, and 466.

Abstract: Section 6110(f) of the Internal Revenue Code requires that a notice of intention to disclose be sent to all persons to which a written determination (either a technical advice memorandum or a private letter ruling) is issued. That section also requires that such persons receive a notice if related background file documents are requested. Notice 437 is issued to recipients of letter rulings; Notice 438 to recipients of technical advice memorandums; and Notice 466 to recipients if a request for the related background file document is received. The notices also inform the recipients of their right to request further deletions to the public inspection version of written determinations or related background file documents.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10153 Filed 4–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–86–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE–86–88, Incentive Stock Options (§ 1.6039–2).

DATES: Written comments should be received on or before June 15, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Incentive Stock Options.

OMB Number: 1545–0820.

Regulation Project Number: EE–86–88.

Abstract: This regulation provides guidance to certain taxpayers who participate in the transfer of stock pursuant to the exercise of incentive stock options in accordance with section 6039 of the Internal Revenue

Code. Code section 6039 requires all corporations who transfer stock to any person after 1979 pursuant to that person's exercise of a statutory stock option (as defined in Code sections 422 and 423) to furnish that person with a written statement describing the transfer. In addition, the corporation may be required to furnish the person a second written statement when the stock originally transferred pursuant to the exercise of the statutory option is subsequently disposed of by the person.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 16,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10154 Filed 4–15–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Amendment of a Savings Association's Bylaws.

DATES: Written comments should be received on or before June 15, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0017. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Amendment of a Savings Association's Bylaws.

OMB Number: 1550–0017.

Form Number: N/A.

Abstract: Part 544 and 552 of the OTS' regulations require Federally-chartered savings associations to obtain the Bureau's approval of any change in its bylaws that is not pre-approved by regulation.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 62.

Estimated Time Per Respondent: 7.7 average hours.

Estimated Total Annual Burden Hours: 478 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10119 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Amendment of a Savings Association's Charter.

DATES: Written comments should be received on or before June 15, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0018. These submissions may be hand delivered to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Amendment of a Savings Association's Charter.

OMB Number: 1550–0018.

Form Number: N/A.

Abstract: Part 544 and 552 of the OTS' regulations require Federally-chartered savings associations to obtain the Bureau's approval of any change in its charter that is not pre-approved by regulation.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 33.

Estimated Time Per Respondent: 9.8 average hours.

Estimated Total Annual Burden Hours: 324 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10120 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Applications Filing Fees.

DATES: Written comments should be received on or before June 15, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0053. These submissions may be hand delivered to 1700 G Street, NW. From 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Applications Filing Fees.

OMB Number: 1550–0053.

Form Number: N/A.

Abstract: 12 CFR Section 502.3 requires that fees accompany certain applications, filings, notices and requests by the industry.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 3,066.

Estimated Time Per Respondent: .036 average hours.

Estimated Total Annual Burden Hours: 110 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10121 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Identification Requirements for Filings.

DATES: Written comments should be received on or before June 15, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0056. These submissions may be hand delivered to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Identification Requirements for Filings.

OMB Number: 1550–0056.

Form Number: N/A.

Abstract: 12 CFR 516.1 contains the OTS applications filing procedures. Three copies must be filed with the appropriate OTS Regional Office. Certain applications require more than three copies because the application raises a significant issue of law or policy or because other agencies have statutory oversight over the application.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 3,066.

Estimated Time Per Respondent: .17 average hours.

Estimated Total Annual Burden Hours: 521 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10122 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Mutual Capital Certificates.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0050. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Pamela Schaar, Corporate Activities Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7205.

SUPPLEMENTARY INFORMATION:

Title: Mutual Capital Certificates.

OMB Number: 1550–0050.

Form Number: N/A.

Abstract: OTS regulations require that any insured mutual capital certificates obtain OTS approval. Approval may not be granted the proposed issuance of the mutual capital certificates are in the form and manner prescribed by 12 CFR § 563.74.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 2.

Estimated Time Per Respondent: 6 hours.

Estimated Total Annual Burden Hours: 12 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10123 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Procedures for Monitoring Bank Secrecy Act.

DATES: Written comments should be received on or before June 15, 1998 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0041. These submissions may be hand delivered to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Larry Clark, Compliance Division, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5628.

SUPPLEMENTARY INFORMATION:

Title: Procedures for Monitoring Bank Secrecy Act.

OMB Number: 1550–0041.

Form Number: N/A.

Abstract: This collection is necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and the U.S. Department of the Treasury regulations.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Extension of an already approved collection.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,229.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,458 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (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, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 9, 1998.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10125 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

April 9, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

OMB Number: 1550–0041.

Form Number: N/A.

Type of Review: Extension of an already approved collection.

Title: Minimum Security Devices and Procedures.

Description: The Bank Protection Act and OTS' implementing regulations require savings associations to establish security devices and procedures. A written security program allows OTS to evaluate whether savings associations have adopted policies and procedures to ensure compliance with the law and regulations.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1,229.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 2,458 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–10124 Filed 4–15–98; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

College and University Partnerships Program for Turkmenistan

ACTION: Request for Proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with Magtumguli University in Turkmenistan in the field of business administration.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are consistent with the goals and activities of the overall program.

The program awards up to $97,000 for up to a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the College and University Partnerships Program for Turkmenistan and reference number E/ASU–98–08.

DATES: *Deadline for proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, June 15, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about September 1, 1998.

Duration: September 1, 1998–August 31, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Unit, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4126, fax: (202) 401–1433, internet: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To download a solicitation package via internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a solicitation package via FAX on demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–98–08, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get USIS Ashgabat's comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

The College and University Partnership Program for Turkmenistan is limited to the field of business administration. Proposals must focus on curriculum, faculty, and staff development in the eligible discipline. Administrative reform at the foreign partner should also be a project component.

Projects should involve the development of new academic programs or the building and/or restructuring of

an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, DC. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s).

Guidelines U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is limited to Magtumguli University in Ashgabat, which is a recognized, degree-granting institution of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the partner institution, and be citizens, nationals, or permanent residents of Turkmenistan, and be qualified to hold a valid passport and U.S. J–1 visa.

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $97,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 9, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–9946 Filed 4–15–98; 8:45 am]

BILLING CODE 8320–01–M

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Finding of No Significant Impact for the Revised Fish Hatchery Production Plan

AGENCY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of Availability of the Finding of No Significant Impact (FONSI).

SUMMARY: On April 2, 1998, Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission signed the Finding of No Significant Impact (FONSI) which documents the decision to implement the Revised Fish Hatchery Production Plan (Plan). The Plan is programmatic in nature. It provides for the reconstruction of two cold-water hatcheries: Kamas and Whiterocks State Fish Hatcheries; the partial rehabilitation of one cold-water hatchery: Jones Hole National Fish Hatchery; the construction of two new cold-water hatcheries: Fountain Green State Fish Hatchery and Big Springs Tribal Hatchery; the construction of a new warm-water hatchery at either Gandy or Goshen Warm Springs; and an interim native species hatchery. It also includes wetland and/or wildlife habitat enhancement and conversion, improved public education opportunities, stream-side hatching units and new staff residences.

The Mitigation Commission documented the environmental effects of implementing the Revised Plan in an environmental assessment (EA). The Draft EA was developed with public input and the Final EA refined based upon public comment. The Draft and Final EA and Plan were distributed to 115 organizations or individuals. The Commission has found the EA adequate for its decision to fund the implementation of the Proposed Action and has issued its FONSI in accordance with the Commission's NEPA Rule (43 CFR 10010.20).

The Plan incorporates updated feasibility-level cost estimates and long-term fish-stocking needs. The original 1994 Plan was prepared by the U.S. Fish and Wildlife Service, in accordance with and in fulfillment of the Central Utah Project Completion Act of 1992 (Titles II through VI of Pub. L. 102–575).

Implementing the Plan meets the objective of the Central Utah Project Completion Act (CUPCA, section 313(c), Fish Hatchery Production) to increase production of warm- and cold-water fishes for areas affected by the Colorado River Storage Project in Utah, by increasing hatchery production capacity. At the same time, the Plan meets the Commission's mandate to restore, maintain or enhance the biological productivity and diversity of natural ecosystems. This ecosystem restoration standard is met through the provision of the Plan that incorporates the Division's stocking policy, and requires a Tribal stocking policy to reduce the impacts of past practices; includes an education component to educate the public on the use of hatcheries as a tool to meet a management need, and on the importance of habitat to sustain both wild and stocked fish populations;

allocates almost half of the $22.8 million identified in CUPCA 313(c) to fund a new warm-water hatchery, and an interim facility, with the main objective of native fish and amphibian restoration and conservation.

Environmental impacts of this action are not considered significant or highly controversial. Some site-specific impacts may occur with the implementation of the Plan. The incorporation of enhancement measures to compensate for construction impacts will be included on a site-specific basis.

The Plan is related to potential future actions, specifically the improvement or construction of the State, Federal or Tribal fish hatcheries. These future construction projects will require separate NEPA compliance.

FOR FURTHER INFORMATION: Copies of the FONSI, of the Final EA, or additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number below:

Ms. Maureen Wilson, Project Coordinator, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101. Telephone: (801) 524–3146.

Dated: April 2, 1998.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 98–9790 Filed 4–15–98; 8:45 am]

BILLING CODE 4310–05–P

federal register

Thursday
April 16, 1998

Part II

Environmental Protection Agency

40 CFR Parts 85, 89 and 92
Emission Standards for Locomotives and Locomotive Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 89 and 92

[FRL–5939–7]

RIN 2060–AD33

Emission Standards for Locomotives and Locomotive Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is promulgating emission standards and associated regulatory requirements for the control of emissions from locomotives and locomotive engines as required by the Clean Air Act section 213(a)(5). The primary focus of this rule is the reduction of emissions of oxides of nitrogen (NO_X). The standards will take effect in 2000 and will ultimately result in a more than 60 percent reduction in NO_X from locomotives. NO_X is a precursor to the formation of ground level ozone, which causes health problems such as damage to lung tissue, reduction of lung function, and sensitization of lungs to other irritants, as well as damage to terrestrial and aquatic ecosystems. EPA is also promulgating standards for emissions of hydrocarbons (HC), carbon monoxide (CO), particulate matter (PM), and smoke. The overall cost-effectiveness of today's emissions standards is 158 dollars per ton of NO_X, PM and HC reduced. Today's rule also includes a variety of provisions to implement the standards and to ensure that the standards are met in-use. These provisions include certification test procedures, and assembly line and in-use compliance testing programs. Also included in today's rule is an emissions averaging, banking and trading program to improve feasibility and provide flexibility in achieving compliance with the proposed standards. Finally, EPA is promulgating regulations that preempt certain state and local requirements relating to the control of emissions from new locomotives and new locomotive engines, pursuant to Clean Air Act section 209(e).

DATES: This final rule is effective June 15, 1998, except for §§ 92.133, 92.213, 92.216, 92.308, 92.309, 92.406, 92.504, 92.606, 92.708, and 92.910 which are not effective until the Office of Management and Budget (OMB) has approved the information collection requirements contained in them. EPA will publish a document in the **Federal Register** announcing the effective date for those sections. Documents will also be published in the **Federal Register** both when the information collection request (ICR) is sent to OMB for approval and when OMB approves the information collection requirements.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1998.

ADDRESSES: Materials relevant to this final rule are contained in Docket No. A–94–31, located at the Air Docket, 401 M Street SW, Washington, DC 20460, and may be reviewed in Room M–1500 from 8:00 a.m. until noon and from 1:30 p.m until 3:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking contact: John Mueller, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4275, Fax: (313) 741–7816. Requests for hard copies of the preamble, regulation text, Regulatory Support Document (RSD) and Summary and Analysis of Comments Document (SAC) should be directed to Carol Connell at (313) 668–4349.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Clean Air Act as amended in 1990 (hereafter referred to as the Act) mandated that EPA establish emission regulations for a variety of previously unregulated nonroad mobile sources. Included in those requirements was a specific mandate to adopt emission standards for locomotives and locomotive engines. EPA published a Notice of Proposed Rulemaking (NPRM) proposing emission standards and associated compliance mechanisms (e.g., test procedures, certification and enforcement provisions), as well as regulations concerning the preemption of state and local emission standards and other requirements for new locomotives and new locomotive engines on February 11, 1997 (62 FR 6365).

A public hearing was held on May 15, 1997 in Romulus, Michigan at which verbal comments on the NPRM were received. Written comments responding to the proposal were also received. In total, comments were received from 31 public and private parties. The Agency fully considered all comments received in developing today's final rule.

The remaining sections of this preamble describe EPA's resolution of the issues associated with the rulemaking. Section II describes the entities affected by this action. Section III describes EPA's legal authority for this action. Section IV describes today's action and summarizes the changes made from the proposed regulations. Subsequent sections cover the public participation portion of the rulemaking process, the environmental and economic impacts associated with today's action, and a variety of administrative requirements.

II. Regulated Entities

Entities potentially regulated by this action are those which manufacture, remanufacture and/or import locomotives and/or locomotive engines; those which own and operate locomotives; and state and local governments. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers, remanufacturers and importers of locomotives and locomotive engines, railroad owners and operators.
Government ..	State and local governments.[1]

[1] It should be noted that the regulations do not impose any requirements on state and local governments (other than those that own or operate local and regional railroads), but rather implement the Clean Air Act preemption provision for locomotives.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that 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 company is regulated by this action, you should carefully examine the applicability criteria in sections 92.1, 92.801, 92.901 and 92.1001 of the regulatory text in this document, as well as 40 CFR 85.1601 and 89.1. If you have questions regarding the applicability of this regulation to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory Authority

Authority for the actions promulgated in this document is granted to the Environmental Protection Agency (EPA) by sections 114, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216 and 301(a) of the Clean Air Act as amended in 1990 (CAA or "the Act") (42 U.S.C. 7414, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550 and 7601(a)).

EPA is promulgating emission standards for new locomotives and new engines used in locomotives pursuant to its authority under section 213 of the Clean Air Act. Section 213(a)(5) directs EPA to adopt emissions standards for "new locomotives and new engines used in locomotives that achieve the greatest degree of emissions reductions achievable through the use of technology that the Administrator determines will be available for such vehicles and engines, taking into account the cost of applying such technology within the available time period, and noise, energy, and safety factors associated with the application of such technology." As described in this document and in the regulatory support document, EPA has evaluated the available information to determine the technology that will be available for locomotives and engines proposed to be subject to EPA standards.

EPA is also acting under its authority to implement and enforce the locomotive emission standards. Section 213(d) provides that the standards EPA adopts for new locomotives and new engines used in locomotives "shall be subject to sections 206, 207, 208, and 209" of the Clean Air Act, with such modifications that the Administrator deems appropriate to the regulations implementing these sections. In addition, the locomotive standards "shall be enforced in the same manner as [motor vehicle] standards prescribed under section 202" of the Act. Section 213(d) also grants EPA authority to promulgate or revise regulations as necessary to determine compliance with, and enforce, standards adopted under section 213. Pursuant to this authority, EPA is requiring that manufacturers (including remanufacturers) of new locomotives and new engines used in locomotives must obtain a certificate of conformity with EPA's emissions standards and requirements, and must subject the locomotives and engines to assembly line and in-use testing. The language of section 213(d) directs EPA to generally enforce the locomotive emissions standards in the same manner as it enforces motor vehicle emissions standards. Pursuant to this authority, EPA is promulgating regulations similar to those adopted for motor vehicles and engines under section 203 of the Act, which prescribes certain enforcement-related prohibitions, including a prohibition against introducing a new vehicle or engine that is not covered by a valid certificate of conformity into commerce, a prohibition against tampering, and a prohibition on importing a vehicle or engine into the United States without a valid, applicable certificate of conformity. In addition, EPA is promulgating emission defect regulations that require manufacturers to report to EPA emissions-related defects that affect a given class or category of locomotives or locomotive engines.

EPA is also promulgating regulations to clarify the scope of the Act's preemption of state regulation. Section 209(e) prohibits states from adopting and enforcing standards and other requirements relating to the control of emissions from new locomotives and new engines used in locomotives. This provision also grants EPA authority to adopt regulations to implement section 209(e). Pursuant to this authority, EPA is promulgating regulations to implement the express preemption of state emissions standards for new locomotives and new engines used in locomotives, for the purpose of clarifying the scope of preemption for states and industry.[1]

[1] EPA, the State of California and the Class I freight railroads operating in Southern California have been developing a unique, voluntary railroad fleet average program to achieve additional NOx reductions for the South Coast ozone nonattainment area. The program would be implemented principally by the railroads and the California Air Resources Board. The parties are structuring this agreement to achieve their mutual goals, including successful implementation of the unique consultative process in the EPA's approval of the 1994 California state implementation plan (SIP) revisions for the South Coast. In particular, the agreed fleet average program will achieve reductions that meet the targets of measure M-14 included in the 1994 California SIP revisions approved by EPA in 1996. In the event that the agreement fails to attain its identified emission reductions, and is terminated as provided by the agreement, EPA has reserved and will exercise its authorities to assure emission reductions from railroads and/or, if necessary, from other national transportation sources.

IV. Description of Action

This section contains a description of each provision of today's rule. This rule contains emission standards not only for locomotives originally manufactured after the effective date of the standards, but also for existing locomotives originally manufactured after 1972, when remanufactured after the applicable effective date of today's action. Today EPA is adopting the first national emission regulations applicable to locomotives. In addition to emission standards, this rule contains a variety of compliance and enforcement provisions, as well as regulations concerning the preemption of certain state and local controls over locomotives. Each of these items is discussed in detail in this section and in the Summary and Analysis of Comments document (SAC) accompanying this rule. For complete information on the new program requirements the reader is referred to the accompanying regulations appearing at the end of today's document. The reader is also referred to the complete Title 40 , parts 85 and 89 of the Code of Federal Regulations, which this rulemaking amends.[2]

[2] The regulations published at the end of this document do not include a paragraph that was inadvertently included in the regulations signed by the Administrator on December 17, 1997 and released to the public electronically on December 18, 1997. The final rule, as signed by the Administrator and released electronically, contained a regulatory provision that was included in a staff-level draft, but was intended to be deleted from the final version prior to signature. However, due to a mistake, EPA staff inadvertently failed to delete this particular provision prior to signature. In this action, the Administrator removed the following paragraph from the final locomotive emissions regulations:

"(2) Where the manufacturer or remanufacturer identifies the reason(s) that the failing locomotives failed to comply with the applicable emission standards, and demonstrates, to the Administrator's satisfaction, that such reason(s) was (were) beyond the control of the manufacturer or remanufacturer (or its suppliers, or other entities contracted by the manufacturer or remanufacturer to provide goods or services for the manufacture or remanufacture of the locomotive), EPA will not pursue remedial action against the manufacturer or remanufacturer."

To the extent that the rule signed on December 17, 1997 may be deemed to have been promulgated, EPA finds good cause for removing this paragraph without prior notice and comment, since such procedure is unnecessary, and contrary to the public interest. Public notice and comment is unnecessary because EPA is simply removing from the regulatory text a paragraph that the Agency did not intend to include in the final locomotive regulations. Moreover, public notice and comment in this instance is contrary to the public interest because it would delay publication and effectiveness of these emission standards, which would result in delaying the emission benefits that will be achieved through implementation of these standards.

A. Applicability

Section 213(a)(5) of the Act specified that EPA establish emission standards for "new locomotives and new engines used in locomotives." Thus, the general applicability of this action is determined by the definition of "new locomotive" and "new locomotive engine". The Act does not define "new locomotive" or "new locomotive engine." EPA is today exercising its discretion to interpret the terms in the Act that Congress did not expressly define, and is adopting a regulatory definition of "new locomotive" and "new locomotive engine" consistent with the Act's definition of "new motor vehicle" and with EPA's previously adopted definition of "new" for other nonroad vehicles and engines. EPA is defining "new locomotive" and "new locomotive engine" to mean a locomotive or locomotive engine the equitable or legal title to which has never been transferred to an ultimate purchaser; and a locomotive or locomotive engine that has been remanufactured, until it is placed back into service. Where the equitable or legal title to a locomotive or locomotive engine is not transferred before the engine or vehicle is placed into service, then the locomotive or locomotive engine will be new until it is placed into service. EPA is also defining imported locomotives and locomotive engines to be new unless they are covered by a certificate of conformity at the time of importation. Finally, EPA is limiting the applicability of the definition of new locomotive and new locomotive engine to locomotives and locomotive engines originally manufactured after 1972. As is described in the RSD, the applicability is limited in this manner to eliminate the unwarranted burden of bringing very old locomotives into compliance.

The definition of "new locomotive" and "new locomotive engine" is consistent with, but not identical to, the definition of "new nonroad engine" and "new nonroad vehicle" that EPA promulgated on July 20, 1994 (59 FR 36969), and revised on October 24, 1996 (61 FR 52102). The definition of "new nonroad engine" includes only freshly manufactured engines, while today's definition of "new locomotive" and "new locomotive engine" includes both freshly manufactured and remanufactured locomotives and engines, for the reasons described below.

The Agency is defining "remanufacture" of a locomotive as a process in which all of the power assemblies of a locomotive engine are replaced with freshly manufactured (containing no previously used parts) or refurbished power assemblies, or are inspected and qualified. Inspecting and qualifying previously used parts can be done in several ways, including such things as cleaning, measuring physical dimensions for proper size and tolerance, and running performance tests to assure that the parts are functioning properly and according to specifications. The refurbished power assemblies could include some combination of freshly manufactured parts, reconditioned parts from other previously used power assemblies, and reconditioned parts from the power assemblies that were replaced. In cases where all of the power assemblies are not replaced at a single time, a locomotive will be considered to be "remanufactured" (and therefore "new") if all of the power assemblies from the previously new engine had been replaced within a five year period.

EPA's determination that remanufactured locomotives and engines are new is based on the remanufacturing practices of Class I railroads, which use more than 90 percent of the fuel used in the current locomotive fleet, and thus create more than 90 percent of total locomotive fleet emissions. EPA is exempting from the definition of "new locomotive" and "new locomotive engine" remanufactured locomotives and engines owned and operated by small railroads (as defined by the Small Business Administration), pursuant to the Agency's authority to adopt *de minimis* exemptions from statutory requirements where the benefit of regulation is trivial or nonexistent. *Alabama Power* v. *EPA*, 636 F.2d. 323 (D.C.Cir. 1979).

EPA believes that the emissions impacts of this exemption are trivial, because the emissions from small railroad-owned and operated post-1972 locomotives and engines that are in fact remanufactured are trivial. EPA's analysis in the RSD demonstrates that the total NO_X emissions benefit that could be achieved from requiring such locomotives and engines to meet Tier 0 standards when remanufactured constitutes less than one percent of the total NO_X emissions inventory from the locomotive fleet. Because these locomotives and engines will not be considered new when remanufactured, the preemption provision adopted today does not apply to them at the time of remanufacture. Many small railroads do not actually remanufacture their locomotives and engine, as defined by the regulations adopted today, but instead rebuild them periodically in a manner that does not result in a new locomotive or engine. While remanufacturing practices are generally consistent among Class I railroads, there is a wide variety of practices among non-Class I railroads. For example, non-Class I railroads are more likely to replace power assemblies only when they fail, so that many of their locomotives are likely to not have all power assemblies replaced within a five-year period. EPA's definition of "remanufacturing" is intended to encompass the remanufacturing practices of Class I railroads, which, for the reasons described above and in the NPRM, result in a locomotive or engine that is new. However, because of the broad spectrum of rebuilding and repair actions taken by small railroads, it is difficult for EPA to draw a "bright line" between such actions that do result in a new engines, and therefore constitute remanufacturing, and those that do not.

EPA is including in its definition of "remanufacture" the conversion of a locomotive or locomotive engine to operate on a fuel other than the fuel it was originally designed and manufactured to operate on. Such conversions typically involve, at a minimum, the replacement or modification of the fuel delivery system, and often involve the replacement or modification of other emissions-critical components, as well as the recalibration of some engine operating parameters. Thus, converted locomotives and locomotive engines will be considered new and subject to today's regulations.

In order to clarify the definition of "freshly manufactured locomotive" for purposes of applicability of the repowering provisions discussed later in the section on other nonroad engines, EPA has added to its proposed definition a provision stating that freshly manufactured locomotives do not contain more than 25 percent (by value) previously used parts. EPA is allowing freshly manufactured locomotives to contain up to 25 percent used parts because of the current industry practice of using various combinations of used and unused parts. This 25 percent value applies to the dollar value of the parts being used rather than the number because it more properly weights the significance of the various used and unused components. The Agency chose 25 percent as the cutoff because it believes that setting a very low cutoff point would have allowed manufacturers to circumvent the more stringent standards for freshly manufactured locomotives by including a few used parts during the final assembly.

B. Timing

Three sets of standards (Tier 0, Tier 1 and Tier 2) are being promulgated in today's action, with the applicability of each set being dependent on the date of original manufacture of a locomotive. The actual levels of these standards are discussed in more detail later in this document. EPA proposed that the Tier 0 and Tier 1 standards take effect January 1, 2000. However, to provide adequate lead time, as discussed in the SAC, these standards are being phased in beginning January 1, 2000. Locomotive manufacturers will have two options to choose from, as described in the following paragraphs.

Under the first option, the Tier 0 standards apply to all new production in the 2001 model year, as well as for the remanufacture of any 1994 through 2001 model year freight locomotives (when remanufactured January 1, 2001 or later). The Tier 0 standards apply to all other 1973 through 2001 model year locomotives when remanufactured on or after January 1, 2002. The Tier 1 standards apply to all locomotives manufactured from 2002 through 2004, both at the time of initial manufacture and at each remanufacture. The Tier 2 standards apply to all locomotives manufactured in 2005 and later, and also apply both at the time of initial manufacture and at each remanufacture. Finally, beginning January 1, 2000, any 1990 or later locomotive for which a certified Tier 0 retrofit kit is available for a reasonable cost must comply with the Tier 0 standards when remanufactured. Reasonable cost encompasses the cost of hardware, fuel and maintenance associated with the complying remanufacture. Reasonable cost also encompasses the idea that the remanufactured locomotive will have reliability throughout its useful life that is similar to the locomotive would have had had it been remanufactured without the certified remanufacture system (i.e., well-maintained, certified locomotives would not have significantly more road failures than would an uncertified locomotive). The criteria for reasonable cost are described in section 92.012 of the regulatory text.

An alternative to the provisions just discussed is being provided for manufacturers for the 1994 through 2001 model year locomotives. Any manufacturer which makes certified Tier 0 retrofit kits available by January 1, 2000 for its primary 1994 through 1997 model year locomotives will only be required to meet the Tier 0 standards on new production in 2000 and 2001 for locomotives similar to their primary 1994 through 1997 model. Other new production models would not need to comply with standards until the Tier 1 standards take effect with the 2002 model year. However, new production locomotives in 2000 and 2001 not meeting any emission standards when originally manufactured will be required to meet the Tier 0 standards at the time of remanufacture. Under this option the primary 1994 and later model year locomotives would be locomotives powered by 710 series engines for General Motors, and the Dash 9/AC4400 series of locomotives for General Electric. The purpose of this approach is to achieve significant emission reductions in the near term by improving the practical feasibility of meeting the standards by limiting the number of locomotive models that a manufacturer must develop Tier 0 remanufacture systems for in the initial years of the program, while focusing efforts on newer, higher usage locomotives. The Tier 1 and Tier 2 standards would be implemented under this option in the same manner as discussed above, as would the Tier 0 trigger provision which begins in 2000.

EPA is including a provision in today's action to allow for the production of some locomotives which do not comply with the applicable standards under certain extraordinary circumstances beyond a manufacturer's control. For example, if a manufacturer had planned to produce a certain number of Tier 1 locomotives in 2004 and some extraordinary circumstance prevented completion of some of those locomotives until 2005, EPA could allow those locomotives to be produced, as planned, in compliance with the Tier 1 standards. Examples of extraordinary circumstances could include, but are not limited to, labor strikes at component suppliers, and damage to production facilities through natural disasters or accidents.

C. Emission Standards

Today's rule contains emission standards for new locomotives and new locomotive engines which are measured over specific duty-cycles. This section first contains a description of those duty-cycles, followed by a description of the actual emission standards. Finally, an alternate set of standards which are provided as an option to the primary standards is presented. Integral to the stringency and feasibility of the emission standards discussed in this section is the averaging, banking and trading program discussed in Section F.

C.1. Duty-cycles

A duty-cycle is defined as a usage pattern for any class of equipment, using the percent of time at defined loads, speeds or other readily identifiable and measurable parameters. EPA's emission standards for mobile sources are typically numerical standards for emissions performance measured during a test procedure that embodies a specific duty-cycle for that kind of equipment. The standards adopted today require compliance over two defined duty-cycles. The first duty-cycle is one weighted towards operation in the higher power notches, and is typical of line-haul applications. The second duty-cycle is typical of switch operations, with more emphasis on idle and low power notch emissions. These duty-cycles are presented in Table IV–1. Since these duty-cycles merely represent the percent of time locomotives typically spend in each throttle notch and are not used during actual emissions testing, they are termed throttle notch weighting factors. In other words, they are not actual test cycles.

TABLE IV–1.—THROTTLE NOTCH WEIGHTING FACTORS FOR LOCOMOTIVES AND LOCOMOTIVE ENGINES

[Percent weighting per notch]

Throttle notch	Line-haul (high power)	Switch (low power)
Idle	38.0	59.8
Dynamic brake	12.5	0.0
1	6.5	12.4
2	6.5	12.3
3	5.2	5.8
4	4.4	3.6
5	3.8	3.6
6	3.9	1.5
7	3.0	0.2
8	16.2	0.8

C.2. Emission Standards

As proposed, today's rule contains three sets of exhaust gaseous and particulate emission standards for locomotives (Tier 0, Tier 1 and Tier 2), with the applicability of each dependent on the date of original manufacture of a locomotive, as discussed in the previous section on timing. Standards are included for NO_x, PM, HC, CO and smoke. EPA is not finalizing the proposed aldehydes standards for alcohol locomotives because aldehydes are specifically measured, and thus regulated, in the context of the THCE standards. Each set of standards includes requirements that locomotives comply with duty-cycle standards when using notch weighting factors representative of operation in both line-haul and switch duty-cycles. In general, locomotives covered by these standards must meet both sets of duty-cycle

standards. However, Tier 0 switch locomotives (i.e., locomotives dedicated to switch operation) rated at or under 2300 horsepower (hp) are only required to meet the Tier 0 switch duty-cycle standards since such locomotives are extremely unlikely to encounter high power operation associated with line-haul operations, and because of the potential difficulty in bringing such locomotives into compliance with the line-haul duty-cycle standards. EPA requested comment on this provision based on its applicability to switch locomotives rated at or under 2000 hp, but is revising the hp rating based on new information that a significant number of existing switch locomotives are between 2000 and 2300 hp. No individual certification throttle notch standards are being promulgated, although in-use notch standards based on notch emission levels measured at certification are included, as discussed in the later section on defeat devices. The standards are summarized in Table IV–2. In addition to the exhaust emission standards, there are smoke opacity standards for all locomotives and locomotive engines covered by today's action. These standards are shown in Table IV–3.

TABLE IV–2.—EXHAUST EMISSION STANDARDS FOR LOCOMOTIVES [1]

Tier and duty-cycle	Gaseous and particulate emissions (g/bhp-hr)			
	HC[2]	CO	NO_x	PM
Tier 0 line-haul duty-cycle	1.00	5.0	9.5	0.60
Tier 0 switch duty-cycle	2.10	8.0	14.0	0.72
Tier 1 line-haul duty-cycle	0.55	2.2	7.4	0.45
Tier 1 switch duty-cycle	1.20	2.5	11.0	0.54
Tier 2 line-haul duty-cycle	0.30	1.5	5.5	0.20
Tier 2 switch duty-cycle	0.60	2.4	8.1	0.24

[1] For the applicability of these standards by locomotive model year see the discussion on timing.
[2] HC standards are in the form of THC for diesel, bio-diesel, or any combination of fuels with diesel as the primary fuel; NMHC for natural gas, or any combination of fuels where natural gas is the primary fuel; and THCE for alcohol, or any combination of fuels where alcohol is the primary fuel.

TABLE IV–3.—SMOKE STANDARDS FOR LOCOMOTIVES

[Percent Opacity—Normalized]

	Steady-state	30-sec peak	3-sec peak
Tier 0	30	40	50
Tier 1	25	40	50
Tier 2	20	40	50

As described in this notice, and in the Regulatory Support Document (RSD), EPA has determined that the Tier 2 emissions standards for new locomotives and new engines used in locomotives achieve the greatest degree of emissions reductions achievable through the use of technology that EPA has determined will be available for application in 2005, taking into consideration cost and other factors. Comments from engine manufacturers expressed strong concern about the technology forcing nature of the standards and about their ability to identify, develop, and apply the technologies that will be needed to locomotive engines by 2005. EPA's detailed response to the engine manufacturers' comments can be found in the SAC for this rule.

EPA is confident that manufacturers will be able to comply with the Tier 2 standards in a cost-effective manner by 2005, but recognizes that these are technology forcing standards which will require significant effort to achieve. The technology that the manufacturers are likely to use to achieve the 2005 standards is not being used on locomotives being manufactured today, but is being applied to various degrees on other compression-ignition engine transportation sources. Between the date of the promulgation of this rule and 2005, EPA expects that manufacturers will make a strong comprehensive effort to comply with the 2005 and later model year emission standards and later provisions. Nonetheless, as with all technology forcing standards, there is some uncertainty in predicting the successful development and application of the expected emission control technologies. EPA recognizes that industry experience over the next seven years will demonstrate whether EPA's technical projections are accurate and valid. If, with the full investment of resources expected, the data developed by the manufacturers indicates that the standards or some portions of them will not be achievable, then as is the case for all rules, the manufacturer(s) may petition the Administrator to reconsider the Tier 2 standards, or any other aspect of this rulemaking.[2] In responding to any such petition, EPA will conduct an in-depth review of all test data and information presented by the petitioner or otherwise obtained by EPA, and will decide on the basis of that information whether the Agency believes it is appropriate to reconsider the Tier 2 standards.

EPA expects that a manufacturer petitioning the Agency to reconsider the Tier 2 standards adopted today would include information such as, but not limited to, the following: (1) A detailed description of all activities undertaken by the manufacturer in its efforts to meet the Tier 2 standards, including a description of all resources allocated to research, development, and testing, all technological options investigated by the manufacturer, and the results of these investigations, and all technological options the manufacturer chose not to investigate, with the basis and reasons for such choice, (2) a detailed description of all then-current problems identified by the manufacturer that would interfere with complying with the Tier 2 standards, (3) a

[2] In the event that EPA receives and grants a petition for reconsideration of the Tier 2 NO_x emission standard, the Agency will begin to work on development of options for the federal backstop of the South Coast Locomotive Fleet Average Agreement discussed in footnote 1.

description of all potential solutions to these problems investigated by the manufacturer to that time, and the results of these investigations, and (4) a description of the specific changes or time extensions to the Tier 2 regulations that the manufacturer is requesting, along with an explanation of why these changes or extensions would be appropriate under section 213(a)(5). In evaluating any such petition, EPA would evaluate the new information concerning issues relevant under section 213(a)(5), such as technological feasibility, energy, noise, safety and the cost of complying with the Tier 2 standards in 2005, in determining whether it is appropriate to reconsider the Tier 2 standards. EPA would also consider factors such as reliability and durability as relevant under section 213(a)(5).

As with any such petition received by the Agency, EPA believes that a manufacturer's petition for reconsideration of the Tier 2 standards warrants timely Agency response. Since submitting a petition for reconsideration does not suspend implementation of the Agency action at issue, EPA believes it is important to provide manufacturers with a final decision on their request as early as possible once a petition for reconsideration is filed. EPA also believes that a petitioner would present a comprehensive and in-depth analysis of the appropriate issues and would respond in a timely manner to reasonable Agency requests for clarification or for additional information. Therefore, EPA expects to respond to such petitions within 300 days of receipt. Once EPA has taken its final action on the petition, petitioners could challenge that action in the Court of Appeals. The Court would review EPA's action on the petition using an appropriate standard of review as described in the then-applicable case law. If EPA fails to take final action on the petition within 300 days of receipt, the petitioner might seek to compel Agency action through an "unreasonable delay" claim; the district court would review any such challenge under the then-applicable case law. As part of the response to such a petition the Agency may pursue a rulemaking action to revise one or more provisions of this rule or to develop nonconformance penalties for the pollutant(s) at issue.

As part of its efforts to implement this rule, EPA intends to meet annually with each manufacturer of new locomotives and new locomotive engines to review its progress and future plans to comply with the emissions standards and requirements adopted today. EPA believes such exchanges will be helpful in gauging overall manufacturer progress and identifying potential difficulties and resolutions early in the technology development and assessment process.

C.3. Alternate Standards

EPA is promulgating an alternate (i.e., optional) set of CO and PM standards that are intended primarily to address locomotives which operate on alternative fuels such as natural gas. Natural gas locomotives are expected to have somewhat higher (and more difficult to control) CO emissions than diesel-fueled locomotives, but lower PM emissions. These differences are due to the different molecular structure of alternative fuels compared to diesel fuel which result in the need to operate under different conditions (e.g., different air/fuel ratios, spark ignition vs. compression ignition). The alternate standards allow higher CO emissions than the primary standards applicable to all covered locomotives and locomotive engines, but also require lower PM emissions. The lower PM standards are appropriate because alternative fuel vehicles in general have demonstrated inherently lower PM emissions than diesel vehicles, and, as is discussed in the RSD, there is no reason to believe that this will not be the case for locomotives as well. Although these alternate standards are primarily intended to address issues associated with alternative fuels, manufacturers and remanufacturers can certify to such standards in lieu of otherwise applicable Tier 0, Tier 1, and Tier 2 standards. Manufacturers and remanufacturers can choose to comply with the appropriate set of alternate standards, shown in Table IV–4, instead of the applicable Tier 0, Tier 1, or Tier 2 CO and PM standards listed in Table IV–2, for any locomotives or locomotive engines regardless of fuel used. However, they are not allowed to mix the alternate CO standards with the primary PM standards for a single engine family.

TABLE IV–4.—ALTERNATE CO AND PM STANDARDS

[g/bhp-hr]

	Line-haul cycle		Switch cycle	
	CO	PM	CO	PM
Tier 0	10.0	0.30	12.0	0.36
Tier 1	10.0	0.22	12.0	0.27
Tier 2	10.0	0.10	12.0	0.12

Since alternative fuel locomotives are not currently in general use, EPA expects that a certain amount of development work will be needed to bring such locomotives to market. In order to accommodate this development work and not inhibit the introduction of alternative fuel locomotives, EPA is expecting manufacturers to use the general testing exemptions. These exemptions from the requirements and prohibitions of today's regulations will be granted based on a demonstrated need for purposes of technology development. Testing exemptions may be granted for periods up to two years. EPA is also establishing another provision that would allow the Administrator to certify an alternative fuel locomotive, but to waive some requirements for the full useful life period of the locomotive. This provision would only apply for locomotives involved in technology development programs, and would be used at the Administrator's discretion.

D. Other Nonroad Engines

EPA is finalizing the proposed provision allowing any manufacturer which manufactures nonroad engines not normally used in locomotives and which are certified according to the provisions of 40 CFR Part 89 to sell up to 25 of those engines a year for use in replacing existing locomotive tractive power engines (i.e., repowering). In the final rule, EPA is not including the proposed restrictions on the upper limit of the hp rating of engines sold under this provision. EPA has determined that an upper limit on hp is not necessary since essentially all repowering done with non-locomotive engines is done to switch locomotives. Manufacturers may sell such engines for repowering, within the overall limit of 25 per year, in engine families for which projected sales for non-locomotive applications exceed projected sales for locomotive applications. Engines sold under this provision will be treated the same as other locomotive engines with respect to preemption because they meet the definition of new locomotive engine. EPA retains the authority as a condition of the exemption from the Part 92 certification provisions to require testing of such engines at locomotive power points. While such data could be used to detect the presence of defeat devices, in general it will be used for informational purposes only since the engines will not be certified to the part 92 emission standards. Engines used to repower existing locomotives under this provision will generally be subject to the requirements of 40 CFR Part 89 and will therefore not be subject to in-use

testing, or certification requirements if rebuilt to their original configuration, or a different configuration certified according to 40 CFR Part 89. However, the tampering prohibitions apply when these engines are rebuilt. EPA does not believe that this repowering provision will be used to circumvent the intent of today's regulations, and has included appropriate safeguards to assure that this will not be the case. For example, this exemption is subject to EPA approval, and if the Agency has reason to believe that this provision is being used in such a manner it will not grant the exemption.

Engines used to repower existing locomotives but not eligible to use the 40 CFR Part 89 provisions just discussed because they exceed the sales limit must be certified according to the provisions of 40 CFR Part 92 contained in this action. Engines which are used to repower existing locomotives and which are identical to the original engine (i.e., replacement engines) are considered repowers. As with all locomotives and locomotive engines certified according to the provisions of 40 CFR Part 92, in-use testing will be done on locomotives, rather than engines. In-use nonconformities will be determined based on such locomotive testing. Manufacturers of repowering engines certified according to the provisions of 40 CFR Part 92 will be allowed to petition EPA for a shorter useful life than the minimum useful life value of 7.5 megawatt-hours per horsepower (MW-hr/hp) discussed in the next section.

In addition to the repowering provisions just discussed, EPA is allowing locomotive manufacturers to use a small number of engines certified to the standards in 40 CFR Part 89 in freshly manufactured switch locomotives. The purpose of this provision is to reduce the certification burden associated with the occasional locomotive manufacturer practice of building very small numbers of switch locomotives using nonroad engines not normally used in locomotives. For a given locomotive manufacturer, this provision will be limited to 15 locomotives over any three year period. This limit will apply to the locomotive manufacturer, rather than the engine manufacturer, in cases where the engine manufacturer and locomotive manufacturer are different. Engines sold by an engine manufacturer for use in freshly manufactured locomotives under this provision will not be included in the sales limit for engines used for the repowering of existing locomotives discussed previously.

EPA is providing an exemption from the Tier 0 requirements in 40 CFR Part 92 for existing nonroad engines (i.e., engines which would likely have fallen under the exemption for repowers previously discussed if they were freshly manufactured) provided they use Tier 0 compliance kits which are certified on engines using the 40 CFR Part 89 test protocols. Such retrofit kits will be required under this exemption to demonstrate a NO_X reduction of 40 percent from baseline levels to be considered to have met the Tier 0 requirements. This 40 percent reduction is intended as a conservative approach to address uncertainties associated with a lack of data correlating the 40 CFR Part 89 and Part 92 test procedures, and will assure that, given the differences in engine operating test points between the locomotive test procedures and those contained in 40 CFR Part 89, these Tier 0 locomotives will have emission reductions at least as great as Tier 0 locomotives certified according to the locomotive compliance provisions contained in this rule. Alternately, such existing "nonroad" engines can be exempted from the Tier 0 requirements in 40 CFR Part 92 provided they are remanufactured into a configuration previously certified according to 40 CFR Part 89.

E. Useful Life

A locomotive or locomotive engine covered by the standards contained in this action will be required to comply with the standards throughout its useful life. The minimum, or default, useful life period for all locomotives certified in compliance with the standards is, in MW-hrs, 7.5 times the rated horsepower, or ten years, whichever occurs first. For Tier 0 locomotives not equipped with MW-hr meters, the minimum useful life value is 750,000 miles or 10 years, whichever occurs first. The minimum useful life value is intended to represent the expected median remanufacture interval for the Class I railroad locomotive fleet during the early part of the next century. Information supporting these useful life values can be found in the RSD. Since it is expected that future locomotives may well be designed to be operated significantly beyond the minimum useful life values, manufacturers and remanufacturers will be required to specify a longer useful life where appropriate. In general, EPA expects that a locomotive model's useful life be at least as long as its median remanufacture interval, and will require manufacturers and remanufacturers to specify a longer useful life if EPA believes that the median remanufacture interval will be, in practice, longer than the manufacturer's or remanufacturer's specified useful life. However, EPA would take into account special cases where a railroad is operating locomotives beyond their legitimate design life, as evidenced by significant increases in fuel consumption and/or decreases in reliability or power output before the locomotives are remanufactured.

F. Averaging, Banking and Trading

Today's action includes an emissions averaging, banking and trading (ABT) program. This voluntary program allows the certification of one or more locomotive engine families within a given manufacturer's or remanufacturer's product line at levels above the emission standards, provided the increased emissions are offset by one or more families certified below the emission standards, such that the average of all emissions for a particular manufacturer's or remanufacturer's fleet of new locomotives and new locomotive engines (weighted by horsepower, production volume and estimated remaining service life) is at or below the level of the emission standards. In addition to the averaging program just described, the ABT program contains a banking and trading provision which allows a manufacturer or remanufacturer to generate emission credits and bank them for future use in its own averaging program or sell them to another entity. The ABT program is limited to NO_X and PM emissions, and compliance is determined on a total mass emissions basis to account for differences in the production volume, horsepower and expected remaining service life of different locomotives, and to ensure credits have equivalent values.

When a manufacturer or a remanufacturer uses ABT, it will be required to certify each participating engine family to a family emission limit (FEL) which is determined by the manufacturer or remanufacturer during certification testing. Further, every configuration within that engine family must also comply with the FEL for that family. A separate FEL will be determined for each pollutant which the manufacturer or remanufacturer is including in the ABT program. FEL ceilings are included for Tier 1 and Tier 2 locomotives, such that no Tier 1 or Tier 2 engine family can be certified at an emission level higher than the level of the previously applicable standard. In other words, locomotives subject to the Tier 1 standards cannot be certified at FELs above the Tier 0 standards. Likewise, locomotives subject to the Tier 2 standards cannot be certified at

FELs above the Tier 1 standards. There are no FEL ceilings for Tier 0 locomotives. This approach to FEL ceilings differs from the proposed approach of placing FEL ceilings at levels 1.25 times the standard in response to comments received that the 1.25 factor is overly restrictive and inconsistent with EPA's establishment of FEL ceilings in other mobile source programs. In general, credits will be calculated based on the difference between the certification FEL and the actual emission standard. However, for Tier 0 and Tier 1 PM emissions, credits will be calculated relative to the baseline levels of 0.32 g/bhp-hr for line-haul and 0.44 g/bhp-hr for switch, rather than the Tier 0 and Tier 1 PM standards in order to prevent the generation of windfall credits from locomotives which already emit PM at levels below the standards.

As was previously discussed, today's regulations require that all new locomotives and locomotive engines meet both the line-haul and switch duty-cycle standards, so that more than one standard (and accompanying duty-cycle) applies to a single pollutant. Thus, separate switch and line-haul ABT programs are being promulgated. Each engine family will be allowed to participate in both the switch and line-haul ABT programs. However, line-haul credits will not be allowed to be used to meet the switch standards, and vice versa.

EPA proposed that ABT credits have a three year life, and requested comment on both the proposed three year life and infinite life. In response to comments received stating that a three year credit life provides incentive to use the credits to prevent losing them, which does not help the environment, EPA is finalizing an infinite credit life. As proposed, there will be no credit discounting. EPA proposed to restrict the exchange of credits between different tiers. However, in order to improve the feasibility of the standards and encourage compliance with the standards at the lowest cost, credit exchanges will be allowed between Tier 0, Tier 1 and Tier 2 locomotive engine families, and credits will be allowed to be exchanged to a limited extent immediately upon their generation. However, to ensure that progress is made toward compliance with the technology-forcing Tier 2 standards, EPA is placing some limits on the use of credits to comply with the Tier 2 emission standards. This will encourage manufacturers to make serious efforts toward meeting the Tier 2 standards, while allowing some use of banked credits so manufacturers do not have to ensure that each engine family it manufactures complies with the Tier 2 standards by 2005, allowing them to focus research and development funds. In order to assure that the ABT program is not used to delay the implementation of the Tier 2 technology, only 75 percent of a manufacturer's Tier 2 production will be allowed to be certified at a NO_X FEL greater than the applicable Tier 2 NO_X standards in 2005 and 2006. Only 50 percent of a manufacturer's Tier 2 production will be allowed to be certified at a NO_X FEL greater than the applicable Tier 2 NO_X standards in 2007 and later.

In cases where credits are generated and traded in the same model year EPA will hold both the buyers and sellers of those credits potentially liable for any credit shortfall at the end of the year, except in cases where fraud is involved or a buyer of credits does not buy enough credits to cover its needs. A buyer of credits which are shown later to be invalid will only be required to make up the credit shortfall. There will be no penalty associated with the unknowing purchase of invalid credits. Finally, emission credits will be allowed to be held by entities other than the certificate holder (e.g., the locomotive owner or operator, or any other entity with the approval of the Administrator).

When a locomotive is remanufactured in compliance with the standards contained in today's action, it is required, as a default, to be certified as complying with the standards and/or FELs it was originally certified as meeting before being re-introduced into service following subsequent remanufactures. Any credits generated or used will be calculated based on the estimated remaining service life of the locomotive. For freshly manufactured locomotives it will be assumed for calculation of credits or debits that the remaining service life is 40 years, or seven useful life periods. For Tier 0 locomotives, the age of the locomotive at the time of the initial complying remanufacture will determine its remaining service life to be used in credit calculation. The reader is referred to the regulatory text at the end of this notice and the RSD for the exact schedule to be used in determining the remaining service life.[3] EPA is requiring that locomotives be remanufactured at any subsequent remanufactures in compliance with the standards and/or FELs that they are originally certified as meeting. However, remanufacturers can generate or use credits at the time of subsequent remanufactures by certifying the remanufactured locomotives to different FELs than they were originally certified as meeting. In such cases credits generated or used will be calculated relative to the previous certification levels (either standards or FELs) rather than just the standards, and will be based on the remaining service life of the locomotive.

As was previously discussed, ABT credits will be weighted according to several factors including the number of expected useful life periods remaining at the time a credit is generated or used. Useful life will generally be measured in megawatt-hours (MW-hrs), and EPA is finalizing the proposed requirement that all locomotives certified in compliance with the Tier 1 and Tier 2 standards be equipped with MW-hr meters. However, for those Tier 0 locomotives which do not have MW-hr meters, useful life will be measured in miles or years. For purposes of the ABT program, EPA proposed to create separate ABT classes for Tier 0 locomotives with and without MW-hr meters, and further proposed to restrict the exchange of credits between them. However, in order to allow for a single averaging class which will encompass all Tier 0 locomotives, EPA is finalizing a provision whereby Tier 0 locomotives without MW-hr meters will be assumed to have the minimum useful life in MW-hrs provided they were certified according to the minimum useful life in miles or years. Thus, EPA is not finalizing separate ABT classes for Tier 0 locomotives with and without MW-hr meters, allowing manufacturers and remanufacturers greater flexibility in complying with the emission standards by not prohibiting use of credits generated from an engine family towards another engine family simply because one has MW-hr meters and the other does not. For Tier 0 locomotives which do not have MW-hr meters and are which certified with useful life values other than the minimum value, credits will be prorated according to the ratio of the minimum useful life value and the actual certification useful life. This ratio will then be applied to the MW-hr minimum useful life value to determine the prorated useful life in MW-hr so that the minimum useful life in MW-hr will be adjusted by the same proportion for credit calculation as when measured in miles for certification. This will allow the calculation of credits to be uniform for all locomotives and will allow the exchange of credits between locomotives with and without MW-hr meters.

EPA is allowing the early generation of credits prior to the effective dates of the standards beginning in 1999 as

[3] See 40 CFR Part 92, subpart D, of the regulations in this document.

proposed. For early generation of credits for both freshly manufactured locomotives, and existing locomotives when remanufactured, the NO_X line-haul duty-cycle standard from which credits would be calculated is 10.5 g/bhp-hr. Similarly, the NO_X switch duty-cycle standard from which credits would be calculated is 14.0 g/bhp-hr. This value is a default, and in the case of existing locomotives a remanufacturer can choose to develop a model-specific baseline value based on actual test data for a particular Tier 0 locomotive model. Credits for early compliance will only be calculated for a single useful life period, as opposed to the remaining service life used for most credit and debit calculation, and such locomotives would have to be brought into compliance with the actual Tier 0 emission standards at their next remanufacture. EPA did not propose any restrictions on who could hold credits generated prior to the effective date of the standards. However, EPA will require that any credits from a remanufactured locomotive which are generated and banked prior to 2002 can only be used for Tier 1 and later freshly manufactured locomotives after 2001, in order to address competitiveness concerns raised by locomotive aftermarket suppliers, as detailed in the SAC accompanying this rule. Alternately, EPA is allowing such credits to be used in an unrestricted fashion if they are transferred to the locomotive owner.

EPA did not propose to give any form of credit for the purchase or use of electric locomotives. Amtrak, whose locomotive fleet contains a sizeable number of electric locomotives, commented that EPA should give some form of credit for electric locomotives. While EPA is not including any such provision in this rule, it intends to consider if it is appropriate to give credit for actual emission reductions inherent in the use of electric locomotives as compared to diesel locomotives. Thus, the Agency intends to work with the Department of Transportation, Amtrak, and the concerned commuter authorities to investigate and develop such credits.

G. Compliance Assurance

This section covers the various aspects of the compliance programs for locomotives. A discussion of the certification program is presented first, followed by discussions of the production line and in-use compliance programs, and specific phase-in provisions for these regulations.

G.1. Engine Family Certification

In general, an engine family is a group of locomotives with similar emission characteristics throughout useful life. The specific criteria used to define an engine family are discussed later in this section. For freshly manufactured locomotives an engine family would describe all locomotive models covered by that engine family. For remanufactured locomotives, the engine family must describe models of engines covered, specific processes by which those engines would be remanufactured, and specific locomotive models which those remanufactured engines would go in. Similarly, for repowers and replacement engines, an engine family would describe specific engine models and the specific locomotive models into which those engines would go.

EPA stated in its proposal that, in most cases, locomotives (rather than engines) would be required to be certified with respect to compliance with the applicable emissions standards. The Agency also proposed that in some limited cases locomotive engines, rather than locomotives, be certified. In both cases EPA pointed out that it is the emissions performance of the locomotive in use that is of primary concern, and therefore that liability for in-use emissions performance was to be based on locomotive testing, rather than engine testing. The approach that EPA is finalizing retains the idea that it is the emissions performance of the locomotive, not just the locomotive engine, that is the ultimate concern in controlling locomotive emissions. However, in order to simplify the certification process, EPA is finalizing an approach by which the engine family (as described in the previous and next paragraphs) is certified. Under this approach, it is a condition of the certificate that the certificate holder accept liability for in-use emissions performance as measured by actual locomotive testing. The application for certification for that engine family will include specifications for which locomotive models are included by the engine family. Alternately, a manufacturer or remanufacturer can specify the engine family's requirements in terms of operating conditions, such as cooling rates, that any locomotive in the engine family must provide. In either case, it must be clear for anyone using a certified remanufacturing system that its engine family would include the final remanufactured locomotive. These specifications, in terms of locomotive model or operating condition limitations, will become conditions of the engine family certificate, and the certificate will cover engines in the engine family only when used in the specified locomotives (or under the same operating conditions as specified in the application). Any use of an engine included in that engine family in locomotives or under operating conditions outside of those specified in the certificate would not be covered by that engine families certificate, and would be prohibited. Thus, it is ultimately locomotives which will have to meet the applicable standards in-use. The engines in an engine family will be certified for use in any locomotive, and therefore any locomotive in which the engines are used must meet applicable emission standards, unless a manufacturer or remanufacturer includes specifications or limitations in its application for certification with respect to locomotive models or operating conditions, as described above. Without regard to how these specifications are described, certification testing can be done on either a locomotive or locomotive engine, as proposed. Also, EPA is finalizing its proposed provision to allow a development engine, rather than a preproduction prototype engine, to be tested for certification purposes.

EPA is adopting regulatory definitions of engine family very similar to those proposed for Tier 0, Tier 1, and Tier 2 locomotives. The final definitions are, however, somewhat more flexible than the proposed definitions. For all tiers, the conceptual definition of engine family is "a group of locomotives that are expected to have similar emission characteristics for their useful lives." The regulations also contain specifications for certain locomotive engine parameters that determine whether various locomotives should be grouped into the same engine family. For example, locomotive engines must have the same bore and stroke, and use the same fuel to be grouped into the same engine family. While the proposed definitions would have required locomotives be identical with respect to nearly all of these engine family parameters, the final definitions allow some reasonable deviations for many of the parameters. Given the complexity of bringing a variety of existing locomotive models into compliance, the regulations provide additional flexibility for Tier 0 locomotives by specifying fewer engine family parameters than are specified for Tiers 1 and 2. It is important to note that the engine family parameters specified in the regulations are not intended to prevent manufacturers or remanufacturers from grouping together any locomotives that have similar

emission characteristics. Rather, the specification of these parameters is intended to be a starting point for determining how to group locomotives for compliance purposes. Where manufacturers or remanufacturers have information showing that the emission characteristics of locomotives which would be grouped into separate engine families according to the parameters in the regulations are actually similar, then EPA will allow them to be grouped together. EPA believes, however, that for most cases, locomotives differing significantly with respect to the specified engine family parameters will have dissimilar emission characteristics.

As proposed, EPA is not requiring a pre-production durability demonstration for certification. Such a demonstration would be impractical for locomotives due to the time it would require to accumulate mileage (several years) and the cost of fuel (around $1 million). As proposed, a manufacturer or remanufacturer must estimate in-use emissions deterioration as part of the certification process (through engineering evaluation or other means). In the absence of a durability demonstration EPA will rely on the production line and in-use testing programs to ensure compliance over the full useful life, as described in the proposal.

EPA is finalizing a provision to reduce the reporting burden associated with the application for certification. Certain documents need not be submitted automatically, but must be retained and submitted if requested by EPA. When the Agency exercises its authority to modify the information submission requirements, it intends to provide manufacturers and remanufacturers with a guidance document, similar to the manufacturer guidance issued under the on-highway program, that explains the modification(s). These modifications to the information submission requirements will in no way change the actual requirements of the regulations in terms of the emissions standards, test procedures, etc. Manufacturers and remanufacturers must retain records that comprise the certification application for eight years form the issuance of a Certificate of Conformity whether or not EPA requires that all such records be submitted to the Agency at the time of certification. The Administrator would retain the right to review records at any time and at any place she designates. In addition, in order to facilitate the rapid introduction of complying locomotives, and to reduce the cost and burden of certification, EPA will use a streamlined certification process for the model years of the phase-in (i.e., 2000 and 2001).

G.2. Production Line Testing

The production line testing (PLT) program is an emission compliance program in which manufacturers are required to test locomotives as they leave the point where the manufacture is completed. The objective of the PLT program is to allow manufacturers, remanufacturers and EPA to determine, with reasonable certainty, whether certification designs have been translated into production locomotives that meet applicable standards and/or FELs from the beginning, and before excess emissions are generated in-use.

The Agency is finalizing the proposed PLT program for newly manufactured units based on actual testing according to the federal test procedure (FTP) for locomotives contained in this rule, and a PLT program for remanufactured units requiring remanufacturers to audit a certain number of remanufactures (e.g., assuring that the correct parts are used and they are installed properly), with EPA having the ability to require testing of remanufactured locomotives if in-use data indicates a possible problem with production. Changes to the proposed regulations are noted below. Both the manufacturer and remanufacturer PLT programs begin January 1, 2002. EPA proposed the manufacturer PLT program as a locomotive-based testing program, but is finalizing provisions that allow the testing of either locomotives or locomotive engines. This will reduce the overall cost of the PLT program because it allows PLT testing at the locomotive manufacturers' engine manufacturing facilities, where they already have some emissions testing capabilities, instead of requiring them to build completely new emission testing facilities at their locomotive manufacturing facilities, which are geographically separated from their engine facilities. EPA retains the authority to require locomotive (rather than locomotive engine) testing for PLT purposes should it have reason to believe that there are problems with any aspects of a manufacturer's engine-based PLT program. Any such request by EPA to perform PLT testing on locomotives rather than engines will allow a reasonable amount of time for a manufacturer to prepare to conduct such testing.

This program is different than the approach EPA uses for some other mobile sources, such as on-highway motor vehicles. The more traditional approach relied on for assuring that the engines are produced as designed for other mobile sources is called Selective Enforcement Auditing (SEA). In the SEA program, EPA audits the emissions of new production engines by requiring manufacturers to test engines pulled off the production line upon short notice. This spot checking approach relies largely on the deterrent effect: the premise is that manufacturers will design their engines and production processes and take other steps necessary to make sure their engines are produced as designed and thereby avoid the penalties associated with failing SEA tests, should EPA unexpectedly do an audit.

EPA has taken a different approach in the locomotive PLT program than the SEA program just discussed, largely because of the very low production volumes in the locomotive industry. The locomotive PLT program implements a more flexibly organized testing regime that acts as a quality control method that manufacturers will proactively utilize and monitor to assure compliance. Manufacturers will continue to take steps to produce engines within statistical tolerances and assure compliance aided by the quality control data generated by PLT which will identify poor quality in real time. As noted in the proposal, this program is especially important given that EPA is allowing certification of freshly manufactured locomotives and locomotive engines based on data from a development engine, rather than a pre-production prototype locomotive.

As proposed, manufacturers will select locomotives for the PLT program from each engine family at a one percent sampling rate for emissions testing in accordance with the FTP for locomotives. The required sample size for an engine family is the lesser of five tests per year or one percent of annual production. For engine families with production of less than 100, a minimum of one test per year per engine family is required. Manufacturers may elect to test additional locomotives. EPA has the right to reject any locomotives selected by the manufacturers or remanufacturers if it determines that such locomotives are not representative of actual production. Tests must be distributed evenly throughout the model year, to the extent possible, and manufacturers must submit quarterly reports to EPA on all testing done, as described in the proposal. EPA is finalizing the proposed provision allowing a manufacturer to submit for EPA approval an alternative plan for a PLT program. Any such plan must address the need for the alternative, and should include justifications for the number and representativeness of locomotives tested, as well as having

specific provisions regarding what constitutes a failure for an engine family.

As proposed, if a locomotive or locomotive engine fails a production line test, the manufacturer must test two additional locomotives or locomotive engines out of the next fifteen produced in that engine family in accordance with the FTP for locomotives. When the average of the three test results, for any pollutant, are greater than the applicable standard or FEL, the manufacturers fails the PLT for that engine family. In all cases, individual locomotives and locomotive engines which fail a test in the PLT program are required to be brought into compliance.

Should production line testing show that an engine family is not complying with the applicable standards or FELs, EPA may suspend or revoke the engine family certificate of conformity in whole or in part thirty days after an EPA nonconformance determination. EPA proposed a fifteen day period but is finalizing thirty days as more appropriate since the locomotive manufacturing industry is very low volume and production of actual units proceeds at a much slower pace than for most other mobile sources. Before the suspension or revocation goes into effect, EPA will work with the manufacturer to facilitate approval of the required production line remedy in order to eliminate the need to halt production if possible. To have the certificate reinstated subsequent to a suspension, or reissued subsequent to a revocation, the manufacturer must demonstrate (through its PLT program) that improvements, modifications, or replacement had brought the locomotive and/or engine family into compliance. The Agency retains the legal authority under section 207 of the Act to inspect and test locomotives and locomotive engines, and may do so should such problems arise in the PLT program.

Under the PLT program for remanufactured locomotives, the certificate holder, as a condition of the certificate, is required to audit its remanufacture of locomotives for the use of the proper parts, their proper installation, and all proper calibrations. The certificate holder is required to audit five percent of its systems for each installer of the systems, with a maximum number for each installer of ten systems per engine family. EPA proposed no maximum number of required audits, but is including an upper limit in the rule because it believes that if ten systems in a given engine family for a given installer are audited and shown to have no problems then auditing more would only add cost to the program with little or no additional benefit.

A case of uninstalled, misinstalled, misadjusted or incorrect parts constitutes a failure, and if a failure occurs, the remanufacturer would be required to audit two additional locomotives in the same engine family from the next ten produced for each failure. Whenever all three locomotives failed the audit the engine family will be considered to have failed the audit. Actions in the event of an audit failure would be determined on a case-by-case basis, depending on whether the failure is considered tampering, causing of tampering, inappropriate parts in system, etc. EPA may order, on a case-by-case basis, that remanufacturers conduct emissions testing of remanufactured locomotives in the same manner as required under the PLT program adopted today for freshly manufactured locomotives, and expects to do so if in-use testing or remanufacture system audits showed evidence of noncompliance.

G.3. In-Use Testing

Locomotives and locomotive engines are required to comply with EPA's emission standards for the full extent of their useful lives. To ensure such compliance, EPA is finalizing the proposed in-use testing program for locomotive and locomotive engine manufacturers and remanufacturers. To ensure continued compliance beyond the useful life, and during operation within the period when certain state standards relating to the control of emissions from new locomotives and new locomotive engines are preempted (as discussed later in this notice), EPA is finalizing an in-use testing program for locomotive operators, for the reasons described in the proposal. Each of these programs is discussed in more detail in the following paragraphs.

Under the manufacturer-based in-use testing program, which begins with the 2002 model year, manufacturers and remanufacturers will be required to test in-use locomotives that are properly maintained and used from one engine family per year, using the full FTP. The Agency is requiring manufacturers and remanufacturers to perform in-use testing on locomotives that have reached between 50 and 75 percent of their useful life. The manufacturer must test a minimum of two such locomotives per year, within the subject engine family. If all locomotives tested meet all of EPA's standards, the manufacturer or remanufacturer is not required to perform any more in-use tests that year. For each failing locomotive, two more locomotives would be tested up to a maximum of ten. Manufacturers and remanufacturers will have twelve months after the receipt of in-use testing notification to complete the testing of an engine family.

EPA believes that it is appropriate to provide some flexibility during the initial phase of this program. Therefore, EPA expects, as a matter of policy, to provide an option for the first three years of the in-use testing program (model years 2002 through 2004) whereby a manufacturer or remanufacturer can choose to participate in a more flexible emission factor program in lieu of the required in-use test program. Manufacturers and remanufacturers choosing to participate in this program would be required to test twice as many engine families as required by the normal in-use test program, but would have more flexibility in conducting the testing. The Agency expects that this optional program would be used as an informational program, rather than a compliance program. This option will allow a manufacturer or remanufacturer to gain some experience with the new provisions without an unreasonable fear of enforcement action, while providing EPA with twice as much in-use data as it would otherwise receive. This data will be useful to EPA both in the assessment of deterioration factors used in certification testing and in targeting engine families and technologies for future in-use testing.

Under section 207 of the Act, as applied to locomotives by section 213(d), the Administrator has authority to require manufacturers or remanufacturers to submit a plan to remedy nonconforming locomotives or locomotive engines if EPA determines that a substantial number of a class or category of properly maintained and used locomotives or locomotive engines do not conform with the requirements prescribed under section 213 of the Act. A finding of nonconformance has potentially serious economic and practical consequences, and historically is not an action the Agency takes in insignificant or trivial cases, especially where the manufacturer has made a good faith effort to comply and the problem is unexpected. Manufacturer requirements applicable in the event of a determination under section 207(c) of the Act include submittal of the manufacturer's remedial plan for EPA approval, procedures for notification of locomotive owners, submittal of quarterly reports on the progress of the recall campaign, and procedures to be followed in the event that the manufacturer or remanufacturer requests a public hearing to contest the

Administrator's finding of nonconformity. If a determination of nonconformity with the requirements of section 207(c) of the Act is made, the manufacturer or remanufacturer will not have the option of an alternate remedial action, and an actual recall will be required.

EPA recognizes the unique nature of locomotives and railroad operations relative to highway vehicles such as passenger cars used in personal transportation. Furthermore, the Agency recognizes that in some cases, the actual recall and repair of locomotives could impose severe financial hardship on a manufacturer or remanufacturer if the necessary repair was extremely complex and expensive, and could also adversely impact railroads and other businesses when locomotives are required to be taken out of service for those repairs. In these particular cases and, assuming that the Administrator had not yet made a determination of nonconformity, alternatives to traditional recall will be strongly considered. These alternatives are required to have the same or greater environmental benefit as conventional recall and to provide at least equivalent incentives to manufacturers and remanufacturers to produce locomotives which durably and reliably control emissions.

The second component of the in-use testing program is the railroad in-use testing program adopted pursuant to EPA's authority under section 114 of the Act to require "any person who owns or operates any emission source to establish and maintain records, sample emissions according to EPA specifications, and provide such other information as the Administrator may reasonably require." The railroad in-use testing program is being finalized for the reasons stated in the proposal. Each Class I freight railroad is required to annually test a portion of its total locomotive fleet beginning January 1, 2005. This start date is appropriate because EPA does not expect that a significant number of certified locomotives will have reached the end of their useful lives prior to 2005. EPA proposed a railroad in-use testing program which would have required that ten percent of a railroad's locomotives be tested annually using a simple short test procedure, but also considered and solicited comment on a program that would require testing a much smaller number of locomotives in accordance with the FTP for locomotives. Based on comments received and the lack of a suitable short test, EPA is finalizing the FTP-based testing program. Testing must therefore be done according to the FTP for locomotives contained in this rule. The number of tests that each Class I freight railroad must perform annually is at least 0.15 percent of that railroad's total average locomotive fleet size the previous year. The tests shall be done on locomotives which have reached the end of their useful lives for reasons stated in the proposal. If the number of locomotives in a given railroad's fleet which have reached the end of their useful lives is not large enough to fulfill the testing requirement, railroads are to test locomotives late in their useful lives, as specified in the regulatory text. The test locomotives will be randomly selected by the railroad, unless otherwise specified by the Administrator, and must proportionally represent the railroad's fleet mix of locomotive models.

The railroads are required to submit annual reports summarizing all emissions testing performed. If a particular engine family has consistent emissions problems in all the railroads' fleets, then there may be a problem with the design or manufacture of the locomotives. The locomotives tested under this program will generally be past their useful lives. No recall action can be taken against the manufacturer or remanufacturer in the event of a failure of a locomotive tested beyond the end of its useful life. However, EPA could use this information to target engine families to be tested in the manufacturer/remanufacturer in-use testing program, to target in-use testing by EPA, or to evaluate the deterioration factors submitted with certification applications. If the failures are limited to one railroad's fleet, then it may indicate that tampering or malmaintenance has occurred, which may constitute a violation of tampering prohibition discussed later in this notice.

Given the current size of the Class I locomotive fleet, EPA estimates that there will be approximately 30 in-use locomotive tests performed annually under the railroad in-use program initially. Today's program also gives EPA authority to waive, in whole or in part, the amount of testing required in future years, as described in section 92.1003 of the attached regulatory text. Also included in the railroad in-use testing program is a provision which allows a railroad to petition EPA for approval of alternative in-use testing programs that provide information equivalent to EPA's in-use testing requirements based on criteria such as test procedure accuracy compared to the FTP for locomotives, and how any differences in accuracy are addressed in the locomotive sample size. EPA is finalizing this option for alternative programs in order to allow for the potential of less costly but equally effective programs based on test procedures that may be developed in the future.

G.4. Phase-In Provisions for Small Businesses

A large portion of the locomotive remanufacturing and aftermarket parts industries is made up of small businesses. As such, these industries do not tend to have the financial resources or technical expertise to quickly respond to the Tier 0 requirements contained in today's rule. As fully discussed in Chapter 5 of the SAC document (docket item A–94–31–V–C–1), accompanying this rule, the Small Business Regulatory Enforcement Fairness Act of 1996 and the Regulatory Flexibility Act require EPA to take steps to identify and mitigate the regulatory burden of regulations on small business entities. EPA has taken a number of steps to mitigate any potential impact on the small remanufacturers and component suppliers that are affected by this rule.

The delay the application of Tier 0 standards to locomotives originally manufactured before 1990 until January 1, 2002, is not specifically targeted at small businesses since it applies to all pre-1990 locomotives regardless of who remanufactures them. EPA chose 1990 as a cut point for the phase-in of the Tier 0 standards because pre-1990 locomotives represent the vast majority of locomotives for which the above small business entities supply parts and remanufacturing services. Also, a cut point of 1990 will allow manufacturers and remanufacturers to target their resources more efficiently than if they were required to comply with the Tier 0 standards for all locomotive and locomotive engine models at the same time. This measure should therefore address any feasibility concerns for these small business entities.

The second measure establishes a streamlined certification program for small businesses, applicable through the 2006 model year that will reduce the financial burden of compliance. Under these provisions, certification testing requirements will be phased-in, beginning in 2002. Remanufacturers have the option of testing locomotives (or locomotive engines) using a modified version of the FTP, or of testing using a less rigorous alternate procedure, subject to sales restrictions set by EPA. The modified FTP requires measurement of NO_X, CO_2, smoke, power output, and fuel consumption over the full throttle notch schedule.

Remanufacturers choosing this option could be allowed other deviations from the specified FTP with EPA approval.

Remanufacturers choosing to test using an alternate procedure may specify their own test procedures consistent with good engineering practice and subject to EPA approval, and must provide a supplemental engineering analysis describing the emission controls. However, a remanufacturer may only certify a limited number of rebuild systems each year using such a short test. For example, in 2003, if an individual small business certifies three systems using an alternate test, then the combined number of locomotives remanufactured in that year under those certificates could not exceed 300, with no limits as to how the three certified systems are allocated among the 300 remanufactures. Any other small businesses certifying via an alternate test procedure in 2003 would also be allowed to remanufacture up to 300 locomotives under their own certificates. This number would decrease in subsequent years until 2007, when the small business entities must certify using the full FTP, and must meet all other certification requirements applicable to larger entities.

The phase-in provisions discussed in this section are contained in section 92.012 of the regulatory text for this action.

H. Test Procedures

Due to the fundamental similarity between the emissions components of locomotive engines and on-highway heavy-duty diesel engines, the test procedures contained in today's regulation are based on the test procedures previously established for on-highway heavy-duty diesel engines in 40 CFR part 86, Subparts D and N. Specifically, the raw sampling procedures and many of the instrument calibration procedures are based on subpart D, and the dilute particulate sampling procedures and general test procedures are based on subpart N. The most significant aspects of the test procedures are described below. Also, as with EPA's test procedures for other mobile sources, the regulations will allow, with advance EPA approval, use of alternate test procedures demonstrated to yield equivalent or superior results.

EPA is using a nominally steady-state test procedure to measure gaseous and particulate emissions from locomotives; that is, a procedure wherein measurements of gaseous and particulate emissions are performed with the engine at a series of steady-state speed and load conditions. Measurement of smoke would be performed during both steady-state operations and during periods of engine accelerations between notches (i.e., set speed and load operating points). For locomotive testing, the engine would remain in the locomotive chassis, and the power output would be dissipated as heat from resistive load banks (internal or external). Measurement of exhaust emissions, fuel consumption, inlet and cooling air temperature, power output, etc. would begin after the engine has been warmed up, and would continue through each higher notch to maximum power. The minimum duration of the initial test point (idle or low idle), and each test point when power is being increased is 6 minutes, with the exception of the maximum power point, where the minimum duration of operation is 15 minutes.

Concentrations of gaseous exhaust pollutants are to be measured by drawing samples of the raw exhaust to chemical analyzers; a chemiluminescence analyzer for NO_X, a heated flame ionization detector (HFID) for HC, and nondispersive infrared (NDIR) detector for CO and CO_2. Smoke is to be measured with a smoke opacity meter, and particulate measured by drawing a diluted sample of the exhaust through a filter and weighing the mass of particulate collected. The Agency is including NMHC, alcohol and aldehyde measurement procedures similar to those that are currently applicable to on-highway natural gas- and methanol-fueled engines (40 CFR part 86) be used for natural gas- and alcohol-fueled locomotives.

EPA is establishing test conditions that are representative of in-use conditions. Specifically, the Agency is requiring that locomotives comply with emission standards when tested at temperatures from 45 °F to 105 °F and at both sea level and altitude conditions up to about 4,000 feet above sea level. While EPA is only requiring that locomotives comply with emission standards when tested at altitudes up to 4000 feet for purposes of certification and in-use liability, it is requiring that manufacturers and remanufacturers submit evidence with their certification applications, in the form of an engineering analysis, that shows that their locomotives are designed to comply with emission standards at altitudes up to 7000 feet. The Agency is finalizing correction factors that will be used to account for the effects of ambient temperature and humidity on NO_X emission rates.

The Agency is establishing test fuel specifications for compliance testing (certification, PLT and manufacturer/remanufacturer in-use testing) which are generally consistent with test fuel specifications for on-highway heavy-duty engine certification testing, including the provisions that fuels other than those specified can be used under certain circumstances. The only exception is for the fuel sulfur level. In the case of the sulfur specification, EPA is specifying a lower limit of 0.2 weight percent, and an upper limit of 0.4. These limits are intended to approximate worst case in-use conditions; in those cases where in-use locomotives are operated on low sulfur on-highway fuel, particulate emissions entering the atmosphere can be expected to be lower than levels measured when using the certification test fuel. EPA is taking this approach because there is no reason to believe that in-use locomotives will use only low sulfur on-highway fuel, especially given the higher price of low sulfur diesel fuels, and the difficulty of obtaining low sulfur diesel fuel in some areas of the country. Since the railroad in-use testing program is intended to provide EPA information regarding compliance with emission standards near the end, and beyond, a locomotive's useful life, and the results of such in-use testing would not by themselves be the basis for an EPA recall action, EPA does not believe it is necessary to require simulation of worst-case conditions in railroad in-use testing. For this reason, and given the cost and inconvenience of using a specific fuel for in-use testing by railroads, EPA is not establishing any fuel specifications for in-use railroad testing, and will allow the railroad testing to be done whatever fuel is in the locomotive's tank at the time of testing.

The Agency recognizes that the potential exists for future locomotives to include additional power notches, or even continuously variable throttles, and is allowing alternate testing requirements for such locomotives. Using the same procedures for such locomotives as are specified for conventional locomotives would result in an emissions measurement that does not accurately reflect their in-use emissions performance because it would not be a reasonable representation of their in-use operation. Thus, locomotives having additional notches are required to be tested at each notch, and the mass emission rates for the additional notches will be averaged with the nearest "standard" notch. Locomotives having continuously variable throttles will be required to be tested at idle, dynamic brake, and 15

power levels assigned by the Administrator (including full power), with average emission rates for two power levels (excluding full power) assigned to the nearest "standard" notch. The 15 power levels represent one level for full power and two, to be averaged, for each of the seven intermediate power levels used on current locomotives. The Administrator retains the authority to prescribe other procedures for alternate throttle/power configurations.

The specified test procedures are intended primarily for the testing of locomotives, rather than locomotive engines. However, EPA does recognize that engine testing will be reasonable in some cases, such as data collection from a development engine. For these cases, the engine would be mounted on a stand, with its crankshaft attached to an dynamometer or to a locomotive alternator/generator. Because the Agency believes that it is critical that engine testing be as representative of actual locomotive operation as can practically be achieved, it is requiring that important operating conditions such as engine speed, engine load, and the temperature of the charge air entering the cylinder be the same as in a locomotive in use (within a reasonable tolerance limit).

The test procedures are designed to minimize the variability in measured values to the extent possible. However, given the practical constraints that apply, some variability will remain. In cases where a manufacturer or remanufacturer believes that the FTP provides inadequate repeatability, EPA is allowing them to use replicate tests, subject to some minor restrictions. EPA is also likely to allow special flexibility with respect to replicate measurements for determining compliance with the individual notch standards. This is because problems of variability will be greater for single notch measurements than cycle-weighted averages of the individual notch measurements.

I. Railroad Requirements

As was previously discussed in the section on compliance, today's action contains a two-part in-use testing program, with one part conducted by the manufacturers and remanufacturers, and the other part conducted by the railroads. EPA expects the railroads to provide reasonable assistance to the manufacturers and remanufacturers in providing locomotives to test in support of the manufacturer/remanufacturer in-use testing program. As proposed, if a manufacturer or remanufacturer is unable to obtain a sufficient number of locomotives for testing, EPA may require that the railroads do the testing themselves, under the authority of section 114 of the Act. The Class I freight railroads are also required to conduct the railroad in-use testing program discussed previously.

For reasons discussed in the proposal, under today's action, any locomotive owner that fails to properly maintain a locomotive subject to this regulation will be subject to civil penalties for tampering. Locomotive owners are required to perform a minimum amount of maintenance as specified by the manufacturer or remanufacturer for components that critically affect emissions performance. Such maintenance is to be specified by the manufacturer or remanufacturer at the time of certification, and the locomotive owner is required to perform the specified (or equivalent) maintenance, or be subject to tampering penalties.

J. Miscellaneous

J.1. Liability for Remanufactured Locomotives and Locomotive Engines

The Act defines "manufacturer" as "any person engaged in the manufacturing or assembling" of the new motor vehicles or new motor vehicle engines. In cases where a locomotive remanufacture system is certified by one entity and installed by a different entity either could conceivably be considered the manufacturer. In the proposal EPA sought to define where liability for in-use emissions performance should lie in such circumstance. EPA is finalizing the proposed liability scheme today. Under this approach, the primary liability for the in-use emissions performance of a remanufactured locomotive or locomotive engine would be with the certificate holder. In cases where the certificate holder and installer are separate entities, the certificate holder will be required to provide adequate installation instructions with the system. Since the primary liability is presumed to apply to the certificate holder, the certificate holder has an incentive to ensure that the systems are properly installed. Ultimately, the installer will be liable for improper installation under the tampering prohibitions. The installer will still be considered to be a manufacturer, and thus is also potentially liable under other provisions of this part and the Act. Similarly, any supplier of parts could be considered a manufacturer, and potentially liable for a locomotive's in-use emissions. However, EPA does not intend to hold an entity liable for actions for which the Agency believes that it has no knowledge of or control over. As was previously discussed, EPA expects to hold the certificate holder primarily liable for the in-use emissions performance of locomotives remanufactured under it's certificate of conformity.

J.2. Defect Reporting and Voluntary Emission Recall

EPA is finalizing the provision that a manufacturer or remanufacturer of locomotives or locomotive engines file a defect information report whenever the manufacturer or remanufacturer identifies the existence of a specific emission-related defect in ten or more locomotives, or locomotive engines. EPA proposed that a defect information report be filed if an emission related defect is identified in a single locomotive or locomotive engine, but believes that ten is a more appropriate number for reasons discussed in the SAC accompanying this action. No report will need be filed if the defect is corrected prior to the sale of the affected locomotives or locomotive engines. Further, manufacturers must file a report whenever a voluntary emission recall is undertaken.

J.3. Tampering

EPA is finalizing its proposal to codify the tampering prohibition in section 203(a)(3)(A) of the Act in the locomotive regulations. While this provision of the Act on its face applies to tampering with motor vehicles and motor vehicle engines, section 213(d) directs EPA to enforce the nonroad vehicle and engine emission standards in the same manner as the Agency enforces the motor vehicle emission standards adopted under section 202 of the Act. The statutory tampering prohibition is critical to ensure that vehicles and engines designed and manufactured to comply with EPA emission standards for their full useful lives do not in fact violate such standards due to actions taken both before and after introduction into commerce. For this reason, pursuant to its authority to enforce locomotive emission standards in the same manner as the motor vehicle emission standards, EPA is adopting a regulatory provision that prohibits any person from removing or rendering inoperative any device or element of design installed on or in a locomotive or locomotive engine in compliance with EPA's regulations prior to introduction into commerce, and from knowingly removing or rendering inoperative any such device or element of design after introduction into commerce.

All persons will be prohibited from tampering with any emission-related

component or element of design installed on or in a locomotive or locomotive engine. Locomotive tampering provisions will help ensure that in-use locomotives remain in certified configurations and continue to comply with emission requirements. The Agency is applying the existing policies developed for on-highway tampering to locomotives and locomotive engines included in this rule.[4] In addition, EPA considers knowingly failing to properly maintain a locomotive or locomotive engine to be tampering, as was previously discussed in the section on railroad requirements.

J.4. Emission Warranty

In accordance with section 207(a) of the Act, manufacturers and remanufacturers must warrant to the ultimate purchaser and any subsequent purchaser, for a specified warranty period set by EPA, that the emission related components and systems of locomotives and locomotive engines are free from defects in material or workmanship which would cause such locomotives or locomotive engines to fail to conform with applicable regulations. The statute also requires manufacturers to provide a "time of sale" warranty that the vehicle or engine is designed, built, and equipped so as to conform at the time of sale with applicable emission regulations. See 42 U.S.C. 7541(a)(1).

EPA proposed an emission warranty period for the full useful life of a locomotive. However, for reasons fully discussed in the SAC, the Agency is finalizing an emission warranty period for locomotives that parallels that for the heaviest heavy-duty on-highway engines. For those engines, the current warranty period is roughly one-third of useful life. Thus, for locomotives the warranty period will be one-third of useful life, as based on the minimum useful life value of 7.5 MW-hr. This period is the minimum warranty period. As for heavy-duty diesel engines, if a locomotive is covered by a mechanical warranty for a period longer than the minimum warranty period, then the regulations require the emission warranty to be at least as long as the mechanical warranty.

J.5. Defeat Devices

As is the case for other regulated nonroad and on-highway vehicles and engines, these regulations for locomotives make it illegal for any manufacturer, remanufacturer, or any other person to use a device on a locomotive or locomotive engine which reduces the effectiveness of the emission control system under conditions that would not be reflected in measurements made using the normal emission test procedures and conditions, especially where the feature had the effect of optimizing fuel economy at the expense of emissions performance. Such "defeat" devices are specifically prohibited for motor vehicles under section 203 of the Act. Section 213(d) of the Act directs the Agency to enforce the locomotive standards in the same manner as it enforces motor vehicle standards. Therefore, EPA is establishing an explicit prohibition against the use of defeat devices with locomotives or locomotive engines subject to the federal standards. Examples of some of the types of design features that EPA classifies as defeat devices are contained in the RSD.

Since the use of defeat devices effectively renders the specified test procedures for certification, production line, and in-use testing inadequate to predict in-use emissions, EPA reserves the right to test a certification test locomotive or engine, or require the manufacturer or remanufacturer to perform such testing over a modified test procedure if EPA has reason to believe a defeat device is being used by a manufacturer or remanufacturer on a particular locomotive or locomotive engine. In addition, EPA is also establishing notch caps for in-use testing that prohibit any unreasonable deviation from certification emission rates under any test conditions.

J.6. Exclusions and Exemptions

EPA is adopting regulations which allow exemptions from today's regulations for certain purposes. These purposes include research, investigations, studies, demonstrations, training, or for reasons of national security. Export exemptions, manufacturer-owned locomotive exemptions, and some national security exemptions are automatic, and manufacturers and remanufacturers need not apply to EPA to obtain such an exemption. Other exemptions must be obtained by application to EPA.

J.7. Nonconformance Penalties

EPA is not including any provisions for nonconformance penalties (NCPs) in today's action, for the reasons described in the proposal. However, the Agency will monitor efforts to develop technology to comply with these regulations. Should the need for NCPs become evident in the future, EPA will undertake a rulemaking action at that time to develop appropriate NCPs.

J.8. Aftermarket Parts

In the proposal, EPA stated its intent to follow the approach to aftermarket parts it currently uses for on-highway vehicles. Specifically, EPA proposed to allow the certification of aftermarket parts according to the provisions of 40 CFR part 85, subpart V. For those aftermarket parts not certified according to those voluntary provisions, EPA proposed to apply the policies described in EPA Mobile Source Enforcement Memorandum No. 1A ("Memo 1A"), which outlines the Agency's position on tampering with respect to the use of replacement components on certified vehicles and engines.[5] In general, Memo 1A states that EPA will not consider the use of aftermarket parts to be tampering if those parts can be shown to be identical in all material respects to the original parts they are replacing. Conversely, Memo 1A also states that the use of an aftermarket part would be considered tampering if it causes or contributes to an increase in emissions of a regulated pollutant. In general, EPA is finalizing the approach it proposed. However, the Agency does not believe that the provisions of 40 CFR part 85, subpart V are appropriate for the locomotive industry since those provisions are intended to apply to on-highway vehicles and engines. Instead, EPA is promulgating regulations to allow aftermarket parts suppliers to petition the Agency for advance approval of parts under the tampering policy. Such an approval would not constitute a formal certification, but would merely show that, based on an engineering analysis and/or emissions test data, that the part is identical in all material respects to the original. This advance approval would provide some assurance to entities which use the part that they will not be subject to enforcement action under the tampering prohibition for using that part. However, the entity which manufactures and offers the part for sale will be held liable for any in-use nonconformities attributable to that part, and could be subject to a recall action if the part were used in the remanufacture of a locomotive, as discussed previously in the discussion on liability for remanufactured locomotives. If a part were used for maintenance, rather than during remanufacture, and it caused an in-use nonconformity, its manufacturer may be liable for a tampering violation.

[4] See Office of Enforcement and General Counsel; Mobile Source Enforcement Memorandum No. 1A, June 25, 1974 (public docket A–94–31, item II–B–5). EPA is not revising Memorandum No. 1A in today's action.

[5] Ibid.

J.9. Importation of Nonconforming Locomotives

Nonconforming locomotive engines originally manufactured after the effective date of this rule will not be permitted to be imported for purposes of resale, except under certain limited exemptions. This rule finalizes most of the proposed exemptions, including temporary exemptions for repairs and alterations, testing and display, and permanent importation exemptions for national security. For reasons discussed in the SAC, EPA is not finalizing the proposed provision to allow the importation of certain locomotives and locomotive engines proven to be identical, in all material respects, to their corresponding EPA certified versions. While the U.S. Customs Service may consider typical current cross-border traffic between the U.S. and Canada or Mexico to constitute the importation of locomotives, EPA is providing an exemption for such traffic if its use in the U.S. is incidental to its primary operation. Such cross-border traffic is not currently extensive.

EPA is not taking any specific actions, such as limiting export exemptions, in order to assure that nonconforming locomotives from Canada or Mexico do not operate extensively in the U.S. However, the Act does give EPA the authority to regulate new locomotives and locomotive engines manufactured (or remanufactured) for introduction into U.S. commerce. A locomotive which is exported for use primarily outside of the U.S. and whose operation within the U.S. would be incidental to its primary operation is not considered to have been introduced into U.S. commerce for the purposes of these emission standards. Should the Agency determine in the future that emissions from uncontrolled Canadian or Mexican locomotives operating in the U.S. have become a significant problem because they are operated in such a way that they should be considered to have been introduced into U.S. commerce, then it will exercise its authority under the Act, consistent with the restrictions of any relevant trade agreements, to control such emissions.

J.10. Passenger Locomotives

The EPA recognizes Amtrak's comments to the docket on the proposed rule. In the comments Amtrak noted that passenger railroads face a variety of challenges both fiscally and otherwise in complying with the remanufacturing aspects of the rule. EPA is thus delaying the effective date of the Tier 0 requirements until January 1, 2007 for passenger locomotives.

In order to address the concerns of Amtrak and to prevent substantial negative impacts from the rule on passenger rail providers, both intercity and commuter, the EPA will undertake to work with the Department of Transportation, Amtrak, and concerned commuter authorities to ensure that the cost of remanufacturing systems, including all associated development and testing costs, do not create an unreasonable economic burden. EPA will also develop a mechanism for providing alternative compliance options such as ABT or NCPs for locomotives for which compliance systems would present an unreasonable economic burden or force a locomotive into noncompliance with Federal safety standards, or other standards that govern the use of that locomotive in revenue service (e.g., axle weight restrictions).

The EPA recognizes that no passenger service, either commuter or intercity, covers its operating expenses; that these entities are largely funded through tax transfers and other subsidies, and that passenger rail represents a benefit, current and developing, to the environment through modal displacement.

K. Preemption

EPA is adopting the proposed regulatory provision clarifying the scope of federal preemption of state standards and requirements relating to the control of emissions from new locomotives and new engines used in locomotives, pursuant to the Agency's authority under Section 209(e) to promulgate regulations to implement this section, for the reasons stated in the NPRM. The provision adopted today codifies in federal regulations the statutory preemption of such state standards and requirements, and lists categories of state regulations that EPA has determined are preempted for a period exceeding the useful life of the locomotive or engine. These categories of state regulations are preempted under Section 209(e)(1), even when applied to in-use locomotives and engines for a period equivalent to 1.33 times the useful life period, because of the significant effect such standards and requirements would have on the design and manufacture of new locomotives and new locomotive engines. EPA's analysis of each standard listed in the preemption regulation provision is described in the NPRM.

EPA's detailed response to comments received on the proposed preemption provision are contained in Chapter 1 of the SAC document in the docket for this rulemaking. EPA solicited comment on the issue of whether state in-use testing programs that utilize the FTP are preempted by CAA Section 209(e)(1), and whether they should be included in the list of preempted provisions in the regulations clarifying the scope of federal preemption of state standards and requirements relating to the control of emissions from new locomotives and new locomotive engines. EPA received comments arguing that such state testing requirements are preempted, and comments opposing that position. Based on the available information, EPA is not currently including such programs in the regulations specifying those state requirements that are categorically preempted by Section 209(e)(1) because EPA cannot conclude that a state's requirement that in-use locomotives be tested using the FTP to determine compliance with the federal standards would necessarily affect how manufacturers and remanufacturers design new locomotives and new locomotive engines.[6]

In addition to the discussion in the NPRM, EPA considered the effect of its own compliance testing program, which includes pre-production certification provisions to check that locomotives and locomotive engines are designed to meet the emission standards, production line testing to determine whether, when this design is put into production, the new locomotives and engines meet the standards, and an in-use testing program to check whether the standards are being met while the locomotives and engines are in use in the railroad fleet. These requirements taken together form one of the most comprehensive mobile source compliance programs that has ever been implemented by EPA. Given the robust nature of this program, EPA expects that manufacturers and remanufacturers will make the efforts necessary to ensure that their locomotives comply with the federal emission standards in-use. Thus, EPA is confident that few, if any, states will find it worth the effort to develop their own state testing program using the FTP. As such, even without a federal regulation that expressly preempts such state testing requirements, the Agency does not expect that state emission testing of locomotives would ever be very extensive. This is significant, because the amount of state testing that is required would affect whether the program(s) would impact the design of new locomotives and new locomotive engines in a manner that warrants

[6] EPA is referring to real and concrete effects on the design and manufacture of new locomotives and new locomotive engines, whether or not large, rather than to speculative or trivial effects.

preemption. With limited state testing, it is not clear what impact state testing would have on the design of new locomotives, or whether it would constitute the kind of effect that would warrant preemption of state testing, especially because manufacturers and remanufacturers will already be basing their compliance on the federal standards and test procedure. Therefore, since EPA cannot conclude that state testing using the FTP would have an effect on locomotive design, EPA is not including state testing programs using the FTP in the list of preempted provisions. Although EPA is not aware at this time of any state's intent to adopt locomotive testing requirements, EPA will monitor state actions in this area. If it turns out that state emission testing requirements identical to the FTP do in fact affect the design and manufacture of new locomotives and engines such that preemption is warranted, EPA will reconsider the regulation adopted today, with a view to including such state testing programs in its regulatory list of preempted state controls.

EPA also received comment on the length of the preemption period. EPA proposed a preemption period equivalent to 1.25 times the useful life period. As is described in the SAC, EPA has determined that the available information supports a preemption period of 1.33 times useful life. This information shows that, because of the distribution of remanufacturing intervals, a small but significant number of locomotives will remain in use after the proposed preemption. EPA has concluded that manufacturers and remanufacturers would be required by the railroads to address any state requirements listed in the regulation that applied to locomotives between 1.25 and 1.33 times the useful life period.

The list of state controls that are explicitly preempted under today's regulation is not intended to be exclusive. Any state control that would affect how a manufacturer designs or produces new (including remanufactured) locomotives or locomotive engines is preempted by section 209(e)(1). It is also important to note that certain categories of potential state requirements, while not expressly preempted by section 209(e)(1) or EPA's regulations implementing section 209(e)(1), are preempted because they would directly conflict with federal regulations. Under section 203(a)(3) of the Act, tampering includes actions that can reasonably be expected to contribute to an increase in emissions of a regulated pollutant. For example, a state requirement to alter the fuel injection system or air intake system of a locomotive to achieve NO_X reductions is likely to cause increased PM and smoke emissions. Therefore, a railroad operator could not comply with the state requirement without making an adjustment to its locomotive that can reasonably be expected to result in an increase in emissions of a regulated pollutant, and would therefore be violating the federal prohibition against tampering. In such cases where it would be impossible to comply with the state requirement without violating a federal prohibition, the federal law preempts the state law. For this reason, such state requirements would be prohibited under the national rule. Finally, state emission controls that are not preempted may violate the Commerce Clause of the U.S. Constitution by imposing an undue burden on interstate commerce. Neither today's regulations, nor section 209 of the Act, address the scope of any limitations on state action under the U.S. Constitution.

It should be noted that EPA has previously promulgated regulations that implement the provision of section 209(e)(2) of the Act that requires that states obtain a waiver prior to regulating nonroad sources. Under this provision, all state requirements relating to the control of emissions from in-use locomotives and locomotive engines, including state requirements not listed as preempted in 40 CFR 85.1603(c)(1), are subject to section 209(e)(2)'s waiver requirement. The regulations state that EPA will authorize California to adopt and enforce such standards and requirements, unless EPA makes certain findings. For example, a waiver will not be granted if EPA finds that California does not need such requirements to "meet compelling and extraordinary conditions," or if EPA finds that the requirements are not consistent with section 209 of the Act. By including new locomotives and new locomotive engines in section 209(e)(1) of the Act, Congress recognized the unique factual circumstances relating to this industry, and provided broader preemption for locomotives than for most other nonroad vehicles and engines. EPA would not grant California a waiver for any requirements if it finds that such California provisions are inconsistent with section 209(e)(1). In determining whether to grant a waiver, EPA would consider the unique circumstances applicable to locomotives and railroads at that time, such as the effect on engine design and on EPA's comprehensive program.

Unless EPA authorizes California to adopt and enforce its own requirements relating to the control of emissions from locomotives, no other state may adopt or enforce any such requirements. However, once such authorization is granted, other states with state implementation plan provisions approved under part D of Title I of the Act may adopt and enforce, after notice to the Administrator, requirements identical to those authorized for California. The significance of this provision is that no state can adopt testing or other requirements relating to the control of emissions from in-use locomotives unless California does so, pursuant to EPA's authorization under section 209(e)(2). Thus, the provisions of section 209(e) of the Act effectively limit California and other states to adopting and enforcing testing programs utilizing the FTP that would achieve the intended emission benefit without having a real and concrete effect on the design or production of new (including remanufactured) locomotives and engines. Since EPA's authorization under section 209(e)(2) may only be granted after notice and opportunity for public comment, railroads and other interested parties will have an opportunity to provide comments to EPA on any proposed authorization of California testing requirements.

V. Public Participation

A number of interested parties commented on EPA's February 11, 1997 NPRM. The comments included written submittals to the rulemaking docket and those presented orally at the May 15, 1997 public hearing. The Agency fully considered these comments in developing today's final rule. Where today's action includes notable changes from the proposal, those changes are noted in the previous description of the action. A complete summary of all comments and EPA's analysis and response to those comments is contained in the SAC accompanying this rule.

VI. Environmental Effects

This section contains a brief summary of the emission benefits expected from the national locomotive emission standards contained in this action. The complete analysis of the expected benefits is contained in the RSD. The primary focus of this regulation is on reducing NO_X and PM, but reductions in HC will also be achieved.[8] Because the emission standards for CO adopted today are intended as caps to prevent increases in CO emissions, no CO

[8] For information on the impacts of NO_X emissions see, "Nitrogen Oxides: Impacts on Public Health and the Environment," EPA 452/R–97–002. August 1997.

reductions are expected to result from today's action.

The benefits analysis was performed in several steps. First, the baseline locomotive fleet composition, emissions rates and total inventory were determined. Second, future fleet composition was projected, from which the emission factors for the fleet were calculated for NO_X, PM and HC. Future emission inventories were then calculated by multiplying these emission factors by fuel consumption to give total tons of emissions per year. Finally, those controlled emission inventories were compared to the baseline fleet emission inventories to arrive at mass NO_X, PM and HC emission reductions for the fleet. Table VI–1 contains a summary of both the fleet percentage and mass reductions for NO_X, PM and HC. It should be noted that both the total emissions and the projected reductions are larger than the corresponding numbers in the proposal. This is because this final analysis includes small freight and passenger railroads that were omitted in the draft analysis. While EPA expects some emission reductions to occur in 2000 and 2001 under today's action, Table VI–1 begins with 2002 because that is the first year that the locomotive emission standards are fully phased in.

TABLE VI–1.—NATIONWIDE EMISSION REDUCTIONS OF NO_X, PM AND HC COMPARED TO 1995 BASELINE LEVELS

[Mass reduction in metric tons per year]

Year	NO_X		PM		HC	
	Percent reduction	Mass reduction	Percent reduction	Mass reduction	Percent reduction	Mass reduction
2002	10	110,000	0.0	0	0.1	44
2005	28	304,000	3	928	3	1,430
2010	41	449,000	16	4,350	15	6,280
2020	49	538,000	28	7,640	26	11,020
2040	59	648,000	46	12,390	43	18,070

VII. Economic Impacts

This section contains a summary of EPA's estimate of costs associated with today's action. Costs are presented in Table VII–1 for Tier 0, Tier 1 and Tier 2 locomotives on a per locomotive basis. The initial compliance costs include research and development costs, initial equipment costs (i.e., hardware costs for components needed to comply with the standards initially, but which are not typically replaced at remanufacture), and the costs of compliance such as certification and testing costs. The remanufacture costs include all costs associated with keeping the locomotive in compliance with the standards through subsequent remanufactures. The fuel cost includes the cost of any fuel economy penalties associated with compliance. The costs presented here are EPA's best estimates of the actual expected costs of this rule. EPA also estimated a worst-case scenario in the RSD. The total and NPV costs under the worst case scenario are $5,076 million and $1,901 million, respectively.

TABLE VII–1.—LIFETIME COST PER LOCOMOTIVE

Cost component	Tier 0	Tier 1	Tier 2
Initial compliance	27,673	71,451	39,589
Remanufacture and maintenance	8,526	25,420	9,840
Fuel	30,589	92,865	200,900
Total	66,785	189,736	250,329
Average annual	3,838	4,627	6,106

Overall program costs and average annual program costs were calculated over a forty-one year time period based on the per locomotive costs and projections of future locomotive fleet composition. These costs are shown in Table VII–2. Where applicable, costs are presented in actual and discounted format. A complete discussion of the methodology EPA used to calculate these costs is contained in the RSD.

TABLE VII–2.—SUMMARY OF 41 YEAR TOTAL LOCOMOTIVE PROGRAM COSTS

[Million $]

	Actual	NPV
Tier 0	1,123.35	584.93
Tier 1	214.66	132.57
Tier 2	1,935.04	613.54
Average Annual	79.83	32.46
Total	3,273.05	1,331.04

VIII. Cost-effectiveness

The costs for NO_X, PM and HC reductions are difficult to assign to a single pollutant due to the relationship between NO_X, PM and HC emission generation. Thus, costs presented below are for all reductions. The following table (Table VIII–1) summarizes the costs and emission benefits of today's action. Costs and emission benefits were

calculated over a 41 year program run to reflect the lifetime costs associated with locomotives and locomotive engines, which typically have lives of 40 years or more.

TABLE VIII–1.—COST-EFFECTIVENESS

	NO_x	NO_x + PM +HC
Total Emission Reduction (millions metric tons)	20.05	20.76
Total Costs (million $)	3,273	3,273
Annual Emission Reduction (metric tons)	489,087	506,271
Annual Costs (million $)	79.83	79.83
Cost Effectiveness ($/ton)	163	158

IX. Administrative Designation and Regulatory Assessment 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 government or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this is a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility

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 rule will not have a significant impact on a substantial number of small entities. The Agency has identified two types of small entities which could potentially be impacted by this proposal: (1) Small businesses involved in locomotive aftermarket parts production and locomotive remanufacturing, and (2) small railroads. EPA believes that, while today's proposal could potentially affect both of these groups, the impacts would be minimal or nonexistent for the following reasons.

In the case of small parts suppliers and remanufacturing businesses, today's rules governing remanufacturing of locomotives or locomotive engines require that any remanufacture of post-1972 locomotives or engines (except those exempted from the remanufacture requirements, as discussed in the next paragraph) be done such that the resultant locomotive or locomotive engine is in a configuration certified as meeting applicable emissions standards. The small remanufacturers would need to comply with these provisions by remanufacturing a locomotive into a configuration certified as meeting the applicable emission standards. The small parts suppliers would have to either certify a remanufacture system which uses its parts or produce parts which others can use in certified remanufacture systems. In either case, EPA believes that the phase-in of the remanufacturing requirements combined with the compliance flexibility given to small businesses during the initial years of the program will allow small businesses to successfully make the transition into the new marketplace for certified remanufactures without hardship. Further, EPA believes that the railroads have a genuine interest in keeping these small businesses operating in order to assure an independent supply of parts and remanufacture services, and will assist these companies in the transition from their current practices to being part of a regulated industry. Finally, while EPA believes that it has included sufficient provisions in this rule to prevent a market disruption where these small businesses are concerned, it has committed to reviewing the situation and taking appropriate actions should the affected small businesses find that the provisions included to help them through the transition phase are not sufficient for the longer term.

EPA believes that today's rule will have a minimal impact on small railroads for two reasons. First, these small railroads do not tend to remanufacture their locomotives to "as new" condition like the Class I railroads do, and thus, their locomotives do not become "new." The Agency has included a provision in this rule whereby small railroads (as defined by the Small Business Administration) are exempt from the Tier 0 remanufacturing requirements for their existing fleets. Second, the railroad in-use test program included in today's rule only applies to Class I freight railroads, thus exempting all small railroads from this testing requirement. In developing this proposed regulation, EPA has tailored the requirements so as to minimize or eliminate the effects on small entities. Therefore, I believe that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request has been prepared by EPA (ICR No. 1800.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740.

The information being collected is to be used by EPA to certify new locomotives and new locomotive engines in compliance with applicable emissions standards, and to assure that locomotives and locomotive engines

comply with applicable emissions standards when produced and in-use.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 494 hours per response, with collection required quarterly or annually (depending on what portion of the program the collection is in response to). The estimated number of respondents is 20 and the estimated number of responses is 126. The total annualized capital/startup cost is $1.8 million. 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; adjusting 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 displayed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments because the rule imposes no enforceable duty on any State, local or tribal governments. The provisions in today's rule relating to the private sector are mandated by section 213(a)(5) of the Act. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million or more in any one year for the private sector. EPA believes that the program represents the least costly, most cost-effective approach to achieving the air quality goals of the program. EPA has performed the required analyses under Executive Order 12866 which contains identical analytical requirements. The benefit and cost analyses of this action can be found in Chapters 6 and 7 of the RSD.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

X. Copies of Rulemaking Documents

The preamble, regulatory text, Regulatory Support Document (RSD) and Summary and Analysis of Comments document (SAC) 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. An electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these documents on the secondary Web site listed below.

http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

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XI. Judicial Review

Under section 307(b)(1) of the Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 15, 1998. Under section 307(b)(2) of the Act, the requirements which are the subject of today's document may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 85

Environmental protection, Air pollution control, Confidential business information, Imports, Labeling, Motor vehicle pollution, Railroads, Reporting

and recordkeeping requirements, Research, Warranties.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 92

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Railroads, Reporting and recordkeeping requirements, Warranties.

Dated: December 17, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the *Code of Federal Regulations* is amended as set forth below:

PART 85—[AMENDED]

1. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, and 7601(a).

2. Section 85.1602 of subpart Q is amended by revising the definition of "locomotive" and adding new definitions for "new locomotive" and "new engine used in a locomotive" in alphabetical order to read as follows:

§ 85.1602 Definitions.

* * * * *

Locomotive. The definition of *locomotive* specified in 40 CFR 92.2 applies to this subpart.

* * * * *

New engine used in a locomotive means new locomotive engine, as defined in 40 CFR 92.2.

New locomotive. The definition of *new locomotive* specified in 40 CFR 92.2 applies to this subpart.

* * * * *

3. Section 85.1603 is amended by revising paragraph (c) to read as follows:

§ 85.1603 Application of definitions; scope of preemption.

* * * * *

(c)(1) States and any political subdivisions thereof are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

(2) During a period equivalent in length to 133 percent of the useful life, expressed as MW-hrs (or miles where applicable), beginning at the point at which the locomotive or engine becomes new, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, aftermarket equipment requirements, and nonfederal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

* * * * *

PART 89—[AMENDED]

4. The authority citation for part 89 continues to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

5. Section 89.1 of subpart A is amended by revising paragraph (b)(3) to read as follows:

§ 89.1 Applicability.

* * * * *

(b) * * *

(3) Engines subject to the standards of 40 CFR part 92 (engines exempted from the requirements of 40 CFR part 92 under 40 CFR 92.907 are subject to the requirements of this part 89); and

* * * * *

§ 89.2 [Amended]

6. Section 89.2 of subpart A is amended by removing the definition of "locomotive".

7. A new part 92 is added to read as follows:

PART 92—CONTROL OF AIR POLLUTION FROM LOCOMOTIVES AND LOCOMOTIVE ENGINES

Subpart A—General Provisions for Emission Regulations for Locomotives and Locomotive Engines

Sec.

Subpart B—Test Procedures

Subpart C—Certification Provisions

Subpart D—Certification Averaging, Banking, and Trading Provisions

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—General Provisions for Emission Regulations for Locomotives and Locomotive Engines

§ 92.1 Applicability.

(a) Except as noted in paragraph (b) of this section, the provisions of this part apply to manufacturers, remanufacturers, owners and operators of:

(1) Locomotives and locomotive engines manufactured on or after January 1, 2000; and

(2) Locomotives and locomotive engines manufactured on or after January 1, 1973 and remanufactured on or after January 1, 2000; and

(3) Locomotives and locomotive engines manufactured prior to January 1, 1973, and upgraded on or after January 1, 2000.

(b) The requirements and prohibitions of this part do not apply with respect to:

(1) Steam locomotives, as defined in § 92.2;

(2) Locomotives powered solely by an external source of electricity;

(3) Locomotive engines which provide only hotel power (see 40 CFR part 89 to determine if such engines are subject to EPA emission requirements); or

(4) Nonroad vehicles excluded from the definition of locomotive in § 92.2, and the engines used in such nonroad vehicles (see 40 CFR parts 86 and 89 to determine if such vehicles or engines are subject to EPA emission requirements).

(c) For cases in which there are multiple entities meeting the definition of manufacturer or remanufacturer, see § 92.209 for guidance.

§ 92.2 Definitions.

(a) The definitions of this section apply to this subpart. They also apply to all subparts of this part, except where noted otherwise.

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Aftertreatment system or *aftertreatment component* or *aftertreatment technology* means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Alcohol fuel means a fuel consisting primarily (more than 50 percent by weight) of one or more alcohols: e.g., methyl alcohol, ethyl alcohol.

Alternator/generator efficiency means the ratio of the electrical power output from the alternator/generator to the mechanical power input to the alternator/generator at the operating point.

Alternator/generator input horsepower means the mechanical horsepower input to the main alternator or generator of a locomotive. For the purpose of calculating brake

horsepower, alternator/generator input horsepower does not include any power used to circulate engine coolant, circulate engine lubricant, or to supply fuel to the engine.

Applicable standard means a standard to which a locomotive or locomotive engine is subject; or, where a locomotive or locomotive engine is certified another standard or FEL, applicable standard means the other standard or FEL to which the locomotive or locomotive engine is certified, as allowed by § 92.8. This definition does not apply to subpart D of this part.

Auxiliary emission control device (AECD) means any element of design which senses temperature, locomotive speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system (including, but not limited to injection timing); or any other feature that causes in-use emissions to be higher than those measured under test conditions, except as allowed by this part.

Auxiliary engine means a locomotive engine that provides hotel power, but does not provide power to propel the locomotive.

Auxiliary power means the power provided by the main propulsion engine to operate accessories such as cooling fans.

Averaging for locomotives and locomotive engines means the exchange of emission credits among engine families within a given manufacturer's, or remanufacturer's, product line.

Banking means the retention of emission credits by a credit holder for use in future calendar year averaging or trading as permitted by the regulations in this part.

Brake horsepower means the sum of the alternator/generator input horsepower and the mechanical accessory horsepower, excluding any power used to circulate engine coolant, circulate engine lubricant, or to supply fuel to the engine.

Calibration means the set of specifications, including tolerances, unique to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range. This definition does apply to subpart B of this part.

Class I freight railroad means a Class I railroad that primarily transports freight rather than passengers.

Class I railroad means a railroad that has been classified as a Class I railroad by the Surface Transportation Board.

Class II railroad means a railroad that has been classified as a Class II railroad by the Surface Transportation Board.

Class III railroad means a railroad that has been classified as a Class III railroad by the Surface Transportation Board.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Crankcase emissions means emissions to the atmosphere from any portion of the crankcase ventilation or engine lubrication systems.

Defeat device means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal locomotive operation and use, unless the AECD or other control feature has been identified by the certifying manufacturer or remanufacturer in the application for certification, and:

(1) Such conditions are substantially represented by the portion of the federal test procedure during which the applicable emission rates are measured;

(2) The need for the AECD is justified in terms of protecting the locomotive or locomotive engine against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

Deterioration factor means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low mileage test point expressed as either: the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low mileage test point (for multiplicative deterioration factors); or the difference between exhaust emissions at the end of useful life exhaust emissions at the low mileage test point (for additive deterioration factors).

Diesel fuel means any fuel suitable for use in diesel engines, and which is commonly or commercially known or sold as diesel fuel.

Emission control system means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes, but is not limited to, mechanical and electronic components and controls, and computer software.

Emission credits represent the amount of emission reduction or exceedance, by a locomotive engine family, below or above the emission standard, respectively. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA.

Emission-data engine means an engine which is tested for purposes of emission certification or production line testing.

Emission-data locomotive means a locomotive which is tested for purposes of emission certification or production line testing.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly described in the approved Application for certification which affects any parameter or specification enumerated in Appendix I of this part.

Emission-related maintenance means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the locomotive or engine with respect to emissions, as described in an approved Application for certification.

Engine family means a group of locomotive or locomotive engine configurations which are expected to have similar emission characteristics throughout the useful lives of the locomotives and engines (see § 92.204), and which are (or were) covered (or requested to be covered) by a specific certificate of conformity.

Engine used in a locomotive means an engine incorporated into a locomotive or intended for incorporation into a locomotive.

Engineering analysis means a summary of scientific and/or engineering principles and facts that support a conclusion made by a manufacturer or remanufacturer, with respect to compliance with the provisions of this part.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

Ethanol means a fuel that contains at least 50 percent ethanol (ethyl alcohol, (C_2H_5OH)) by volume.

Exhaust emissions means substances (i.e., gases and particles) emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of a locomotive engine.

Family Emission Limit means an emission level declared by the certifying manufacturer or remanufacturer to serve in lieu of an otherwise applicable emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

Freshly manufactured locomotive means a locomotive which is powered by a freshly manufactured engine, and which contains fewer than 25 percent previously used parts (weighted by the dollar value of the parts).

Freshly manufactured locomotive engine means a new locomotive engine which has not been remanufactured.

Fuel system means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components (or pressure regulator(s) and carburetor(s) if fuel injection is not employed), fuel system vents, and any other component involved in the delivery of fuel to the engine.

Gaseous fuel means a fuel which is a gas at standard temperature and pressure. This includes both natural gas and liquefied petroleum gas.

Green engine factor means a factor that is applied to emission measurements from a locomotive or locomotive engine that has had little or no service accumulation. The green engine factor adjusts emission measurements to be equivalent to emission measurements from a locomotive or locomotive engine that has had approximately 300 hours of use.

High-altitude means relating to an altitude greater than 4000 feet (1220 meters) and less than 7000 feet (2135 meters), or equivalent observed barometric test conditions of 25.7 to 22.7 inch Hg (88.5 to 78.1 kilopascals).

Hotel power means the power provided by an engine on a locomotive to operate equipment on passenger cars of a train; e.g., heating and air conditioning, lights, etc.

Idle speed means that speed, expressed as the number of revolutions of the crankshaft per unit of time (e.g., rpm), at which the engine is set to operate when not under load for purposes of propelling the locomotive.

Importer means an entity or person who imports locomotives or locomotive engines from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

Inspect and qualify means to determine that a previously used component or system meets all applicable criteria listed for the component or system in a certificate of conformity for remanufacturing (e.g., determine that the component or system is functionally equivalent to one that has not been used previously).

Installer means an individual or entity which assembles remanufactured locomotives or locomotive engines.

Liquefied petroleum gas means the commercial product marketed as liquefied petroleum gas or propane.

Locomotive means a self-propelled piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers or other equipment, but which itself is not designed or intended to carry freight, passengers (other than those operating the locomotive) or other equipment. Other equipment which is designed for operation both on highways and rails; specialized railroad equipment for maintenance, construction, post accident recovery of equipment, and repairs; and other similar equipment; and vehicles propelled by engines with rated horsepower of less than 750 kW (1006 hp) are not locomotives (see 40 CFR Parts 86 and 89 for this equipment).

Locomotive engine means an engine incorporated into a locomotive or intended for incorporation into a locomotive.

Low hour engine means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that 300 additional operating hours have been accumulated (including hours accumulated during emission testing if performed).

Low idle speed means a speed which is less than normal idle speed, expressed as the number of revolutions of the crankshaft per unit of time, at which an engine can be set when not under load for purposes of propelling the locomotive.

Low mileage locomotive means a locomotive during the interval between the time that normal assembly operations and adjustments are completed and the time that either 10,000 miles of locomotive operation or 300 additional operating hours have been accumulated (including emission testing if performed).

Malfunction means a condition in which the operation of a component in a locomotive or locomotive engine occurs in a manner other than that specified by the certifying manufacturer or remanufacturer (e.g., as specified in the application for certification); or the operation of the locomotive or locomotive engine in that condition.

Manufacturer means an individual or entity engaged in the manufacturing or assembling of freshly manufactured locomotives or freshly manufactured locomotive engines; or the importing of locomotives or locomotive engines originally manufactured on or after January 1, 1973 and not remanufactured. (See §§ 92.1(c) and 92.209 for applicability of this term.)

Maximum rated horsepower means the maximum brake horsepower output of an engine.

Mechanical accessory horsepower means the sum of mechanical horsepower generated by an engine to supply accessories. Mechanical accessory horsepower does not include power supplied to the main alternator or generator, power used to circulate engine coolant or engine lubricant, or power used to supply fuel to the engine.

Methanol means a fuel that contains at least 50 percent methanol (methyl alcohol, (CH_3OH)) by volume.

Method of aspiration means the method whereby air for fuel combustion enters the engine (e.g., natural or turbocharged).

Model year means a calendar year; except where the Administrator determines a different production period which includes January 1 of such calendar year.

Natural gas means the commercial product marketed as natural gas whose primary constituent is methane.

New locomotive or *new locomotive engine* means:

(1)(i) A locomotive or locomotive engine the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) A locomotive or locomotive engine which has been remanufactured, but has not been placed back into service.

(2) Where the equitable or legal title to a locomotive or locomotive engine is not transferred prior to its being placed into service, the locomotive or locomotive engine ceases to be new when it is placed into service.

(3) With respect to imported locomotives or locomotive engines, the term "new locomotive" or "new locomotive engine" means a locomotive or locomotive engine that is not covered by a certificate of conformity under this part at the time of importation, and that was manufactured or remanufactured after the effective date of the emission standards in this part which is applicable to such locomotive or engine (or which would be applicable to such locomotive or engine had it been manufactured or remanufactured for importation into the United States).

(4) Notwithstanding paragraphs (1) through (3) of this definition, locomotives and locomotive engines

which were originally manufactured before January 1, 1973 and which have not been upgraded are not new.

(5) Notwithstanding paragraphs (1) through (3) of this definition, locomotives and locomotive engines which are owned by a small railroad and which have never been remanufactured into a certified configuration are not new.

Nonconforming locomotive or *nonconforming locomotive engine* means a locomotive or locomotive engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately demonstrated to EPA); or a locomotive or locomotive engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity. (Note: Domestic locomotives and locomotive engines which are not covered by a certificate of conformity prior to their introduction into U.S. commerce are considered to be noncomplying locomotives and locomotive engines.)

Non-locomotive-specific engine means an engine that is sold for and used in non-locomotive applications more than for locomotive applications.

Normal idle means relating to the idle throttle-notch position for locomotives that have one throttle-notch position, or the highest the idle throttle-notch position for locomotives that have two throttle-notch positions.

Opacity means the fraction of a beam of light, expressed in percent, which fails to penetrate a plume of smoke as measured and calculated under the provisions of subpart B of this part.

Original manufacture means the event of freshly manufacturing a locomotive or locomotive engine. The date of original manufacture is the date of final assembly; except as provided in § 92.11. Where a locomotive or locomotive engine is manufactured under § 92.11, the date of original manufacture is the date on which the final assembly of locomotive or locomotive engine was originally scheduled.

Original remanufacture means the first remanufacturing of a locomotive or locomotive engine at which the locomotive or locomotive engines is subject to the emission standards of this part.

Oxides of nitrogen means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

Passenger locomotive means a locomotive designed and constructed for the primary purpose of propelling passenger trains, and providing power to the passenger cars of the train for such functions as heating, lighting and air conditioning.

Petroleum fuel means a fuel primarily derived from crude oil (e.g., gasoline or diesel fuel).

Power assembly means the components of an engine in which combustion of fuel occurs, and consists of the cylinder, piston and piston rings, valves and ports for admission of charge air and discharge of exhaust gases, fuel injection components and controls, cylinder head and associated components.

Primary fuel means that type of fuel (e.g., diesel fuel) that is consumed in the greatest quantity (mass basis) when the locomotive or locomotive engine is operated in use.

Produce means to manufacture or remanufacture. Where a certificate holder does not actually assemble the locomotives or locomotive engines that it manufactures or remanufactures, produce means to allow other entities to assemble locomotives or locomotive engines under the certificate holder's certificate.

Railroad means a commercial entity that operates locomotives to transport passengers or freight.

Rated horsepower means the maximum horsepower output of a locomotive engine in use.

Remanufacture means:

(1)(i) To replace, or inspect and qualify, each and every power assembly of a locomotive or locomotive engine, whether during a single maintenance event or cumulatively within a five year period; or

(ii) To upgrade a locomotive or locomotive engine; or

(iii) To convert a locomotive or locomotive engine to enable it to operate using a fuel other than it was originally manufactured to use; or

(iv) To install a remanufactured engine or a freshly manufactured engine into a previously used locomotive.

(2) *Remanufacture* also means the act of remanufacturing.

Remanufacture system or *remanufacturing system* means all components (or specifications for components) and instructions necessary to remanufacture a locomotive or locomotive engine in accordance with applicable requirements of this part.

Remanufactured locomotive means either a locomotive which is powered by a remanufactured locomotive engine, or a repowered locomotive.

Remanufactured locomotive engine means a locomotive engine which has been remanufactured.

Remanufacturer means an individual or entity that is engaged in the manufacture or assembly of remanufactured locomotives or locomotive engines, (including: Entities that design or produce the emission-related parts used in remanufacturing; entities that install parts in an existing locomotive or locomotive engine to remanufacture it; and entities that own or operate the locomotive or locomotive engine and provide specifications as to how an engine is to be remanufactured (i.e., specifying who will perform the work, when the work is to be performed, what parts are to be used, or how to calibrate the adjustable parameters of the engine)); or an importer of remanufactured locomotives or locomotive engines. (See §§ 92.1(c) and 92.209 for applicability of this term.)

Repower means replacement of the engine in a previously used locomotive with a freshly manufactured locomotive engine. Replacing a locomotive engine with a freshly manufactured locomotive engine in a locomotive that has a refurbished or reconditioned chassis such that less than 25 of the parts of the locomotive were previously used (as weighted by dollar value) is not repowering.

Repowered locomotive means a locomotive that has been repowered with a freshly manufactured engine.

Service life means the total life of a locomotive or locomotive engine. Service life begins when the locomotive or locomotive engine is originally manufactured and continues until the locomotive or locomotive engine is permanently removed from service.

Small railroad means a railroad that is classified by the Small Business Administration as a small business.

Small remanufacturer means a remanufacturer that is classified by the Small Business Administration as a small business.

Smoke means the matter in the engine exhaust which obscures the transmission of light.

Specified adjustable range means the range of allowable settings for an adjustable component specified by a certificate of conformity.

Specified by a certificate of conformity or *specified in a certificate of conformity* means stated or otherwise specified in a certificate of conformity or an approved application for certification.

Steam locomotive means a historic locomotive propelled by a steam engine.

Switch locomotive means a locomotive designed or used solely for the primary purpose of propelling railroad cars a short distance, and that is powered by an engine with a maximum horsepower rating of 2300 hp or less.

Test locomotive or *locomotive engine* means a locomotive or locomotive engine in a test sample.

Test sample means the collection of locomotives or locomotive engines selected from the population of an engine family for emission testing or auditing.

Throttle means the component, or components, which either directly or indirectly controls the fuel flow to the engine.

Throttle notch means a discrete throttle position for a locomotive with a limited number of throttle positions.

Throttle notch horsepower means the brake horsepower output of an engine corresponding to each throttle notch position, including dynamic-brake settings.

Throttle notch speed means the speed of the engine, expressed as the number of revolutions of the crankshaft per unit of time (e.g., rpm), corresponding to each throttle notch position, including dynamic-brake, and hotel power settings.

Tier 0 means relating to emission standards applicable to locomotives originally manufactured before January 1, 2002; or relating to such locomotives.

Tier 1 means relating to emission standards applicable to locomotives originally manufactured on or after January 1, 2002 and before January 1, 2005; or relating to such locomotives.

Tier 2 means relating to emission standards applicable to locomotives originally manufactured on or after January 1, 2005; or relating to such locomotives.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as gasoline-fueled vehicle hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. Total Hydrocarbon Equivalent is abbreviated THCE.

Trading means the exchange of locomotive or locomotive engine emission credits between credit holders.

United States. United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Upgrade means to modify a locomotive or locomotive engine that was originally manufactured prior to January 1, 1973 (or a locomotive or locomotive engine that was originally manufactured on or after January 1, 1973, and that is not subject to the emission standards of this part), such that it is intended to comply with the Tier 0 standards. Upgrading is a type of remanufacturing.

Useful life means the period during which the locomotive engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as work output or miles. It is the period during which a new locomotive or locomotive engine is required to comply with all applicable emission standards.

Volatile liquid fuel means any liquid fuel other than diesel or biodiesel.

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer or remanufacturer to remedy any emission-related defect for which notification of locomotive or locomotive engine owners has been provided.

§ 92.3 Abbreviations.

The abbreviations of this section apply to all subparts of this part and have the following meanings:

ANSI—American National Standards Institute
API—American Petroleum Institute
ASTM—American Society for Testing and Materials
BHP—Brake horsepower
BSCO—Brake specific carbon monoxide
BSHC—Brake specific hydrocarbons
$BSNO_x$—Brake specific oxides of nitrogen
°C—Celsius
cfh—cubic feet per hour
cfm—cubic feet per minute
CFV—Critical flow venturi
CL—Chemiluminescence
CO—Carbon monoxide
CO_2—Carbon dioxide
cu in—cubic inch(es)
CVS—Constant volume sampler
EP—End point
EPA—Environmental Protection Agency
°F—Fahrenheit
FEL—Family emission limit
FID—Flame ionization detector
ft—foot or feet
g—gram(s)
gal—U.S. gallon
GC—Gas Chromatograph
h—hour(s)
H_2O—water
HC—hydrocarbon
HFID—Heated flame ionization detector
Hg—Mercury
hp—horsepower
IBP—Initial boiling point
in—inch(es)
K—Kelvin
kg—kilogram(s)
km—kilometer(s)
kPa—kilopascal(s)
lb—pound(s)
LPG—Liquified Petroleum Gas
m—meter(s)
max—maximum
mg—milligram(s)
mi—mile(s)
min—minute
ml—milliliter(s)
mm—millimeter
mph—miles per hour
mv—millivolt(s)
N_2—nitrogen
NDIR—Nondispersive infrared
NMHC—Non-methane hydrocarbons
NO—nitric oxide
NO_2—nitrogen dioxide
NO_x—oxides of nitrogen
No.—number
O_2—oxygen
pct—percent
PM—particulate matter
ppm—parts per million by volume
ppmC—parts per million, carbon
psi—pounds per square inch
psig—pounds per square inch gauge
°R—Rankin
rpm—revolutions per minute
s—second(s)
SAE—Society of Automotive Engineers
SI—International system of units (i.e., metric)
THCE—Total hydrocarbon equivalent
U.S.—United States
V—volt(s)
vs—versus
W—watt(s)
wt—weight

§ 92.4 Treatment of confidential information.

(a) Any manufacturer or remanufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a person or manufacturer or remanufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and

by means of the procedures set forth in 40 CFR part 2, subpart B.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

§ 92.5 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The 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 U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103. The table follows:

Document number and name	40 CFR part 92 reference
ASTM D 86–95, Standard Test Method for Distillation of Petroleum Products	§ 92.113
ASTM D 93–94, Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester	§ 92.113
ASTM D 287–92, Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).	§ 92.113
ASTM D 445–94, Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity).	§ 92.113
ASTM D 613–95, Standard Test Method for Cetane Number of Diesel Fuel Oil	§ 92.113
ASTM D 976–91, Standard Test Method for Calculated Cetane Index of Distillate Fuels	§ 92.113
ASTM D 1319–95, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.	§ 92.113
ASTM D 1945–91, Standard Test Method for Analysis of Natural Gas by Gas Chromatography	§ 92.113
ASTM D 2622–94, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry	§ 92.113
ASTM D 5186–91, Standard Test Method for Determination of Aromatic Content of Diesel Fuels by Supercritical Fluid Chromatography.	§ 92.113
ASTM E 29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	§§ 92.9, 92.305, 92.509

(2) *SAE material.* The following table sets forth material from the Society of Automotive Engineers that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. Copies of these materials may be obtained from Society of Automotive Engineers International, 400 Commonwealth Dr., Warrendale, PA 15096–0001. The table follows:

Document number and name	40 CFR part 92 reference
SAE Paper 770141, Optimization of a Flame Ionization Detector for Determination of Hydrocarbon in Diluted Automotive Exhausts, by Glenn D. Reschke.	§ 92.119
SAE Recommended Practice J244, Measurement of Intake Air or Exhaust Gas Flow of Diesel Engines.	§ 92.108

(3) *ANSI material.* The following table sets forth material from the American National Standards Institute that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American National Standards Institute, 11 West 42nd St., 13th Floor, New York, NY 10036. The table follows:

Document number and name	40 CFR part 92 reference
ANSI B109.1–1992, Diaphragm Type Gas Displacment Meters.	§ 92.117

§ 92.6 Regulatory structure.

This section provides an overview of the regulatory structure of this part.

(a) The regulations of this part 92 are intended to control emissions from in-use locomotives. Because locomotive chassis and locomotive engines are sometimes manufactured or remanufactured separately, the regulations in this part include some provisions that apply specifically to locomotive engines. However, the use of the term "locomotive engine" in the regulations in this part does not limit in any manner the liability of any manufacturer or remanufacturer for the emission performance of a locomotive powered by an engine that it has manufactured or remanufactured.

(b) The locomotives and locomotive engines for which the regulations of this part (i.e., 40 CFR part 92) apply are specified by § 92.1, and by the definitions of § 92.2. The point at which a locomotive or locomotive engine becomes subject to the regulations of this part is determined by the definition of "new locomotive or new locomotive engine" in § 92.2. Subpart J of this part contains provisions exempting certain locomotives or locomotive engines from the regulations in this part under special circumstances.

(c) To comply with the requirements of this part, a manufacturer or remanufacturer must demonstrate to EPA that the locomotive or locomotive engine meets the applicable standards of §§ 92.7 and 92.8, and all other requirements of this part. The requirements of this certification process are described in subparts C and D of this part.

(d) Subpart B of this part specifies procedures and equipment to be used

for conducting emission tests for the purpose of the regulations of this part.

(e) Subparts E, F, G, and H of this part specify requirements for manufacturers and remanufacturers after certification; that is during production and use of the locomotives and locomotive engines.

(f) Subpart I of this part contains requirements applicable to the importation of locomotives and locomotive engines.

(g) Subpart K of this part contains requirements applicable to the owners and operators of locomotives and locomotive engines.

(h) Subpart L of this part describes prohibited acts and contains other enforcement provisions relating to locomotives and locomotive engines.

(i) Unless specified otherwise, the provisions of this part apply to all locomotives and locomotive engines subject to the emission standards of this part.

§ 92.7 General standards.

(a) Locomotives and locomotive engines may not be equipped with defeat devices.

(b) New locomotives fueled with a volatile fuel shall be designed to minimize evaporative emissions during normal operation, including periods when the engine is shut down.

(c)(1) Locomotive hardware for refueling locomotives fueled with a volatile fuel shall be designed so as to minimize the escape of fuel vapors.

(2) Hoses used to refuel gaseous-fueled locomotives shall not be designed to be bled or vented to the atmosphere under normal operating conditions.

(3) No valves or pressure relief vents shall be used on gaseous-fueled locomotives except as emergency safety devices, and these shall not operate at normal system operating flows and pressures.

(d) All new locomotives and new locomotive engines subject to any of the standards imposed by this subpart shall, prior to sale, introduction into service, or return to service, be designed to include features that compensate for changes in altitude to ensure that the locomotives or locomotive engines will comply with the applicable emission standards when operated at any altitude less than 7000 feet above sea level.

§ 92.8 Emission standards.

(a) *Exhaust standards.* Exhaust emissions from locomotives and locomotive engines, when measured in accordance with the provisions of Subpart B of this part, shall comply with both the applicable line-haul duty-cycle standards, and the applicable switch duty-cycle standards of paragraph (a)(1) (and/or the standards of paragraphs (a)(3) and (a)(4) of this section, as applicable) of this section, and the smoke standards of paragraph (a)(2) of this section. Emissions that do not exceed the standards comply with the standards.

(1) *Gaseous and particulate standards.* Gaseous and particulate emission standards are expressed as gram per brake horsepower hour (g/bhp-hr). Non-methane hydrocarbon standards apply to locomotives and locomotive engines fueled with natural gas, and any combination of natural gas and other fuels where natural gas is the primary fuel; total hydrocarbon equivalent standards apply to locomotives and locomotive engines fueled with an alcohol, and any combination of alcohol and other fuels where alcohol is the primary fuel. Total hydrocarbon standards apply to all other locomotives and locomotive engines; that is, those not fueled by natural gas or alcohol. The line-haul duty-cycle standards and switch duty-cycle standards apply to the respective cycle-weighted emission rates as calculated in subpart B of this part.

(i) *Tier 0.* The following locomotives (and the engines used in the following locomotives) are subject to the Tier 0 emission standards listed in Table A8–1 of this section: Locomotives manufactured on, or after, January 1, 1973, and before January 1, 2002; and upgraded locomotives manufactured prior to January 1, 1973. The standards apply when such a locomotive or locomotive engine is manufactured, remanufactured, or imported on or after January 1, 2002; except where the locomotive was previously certified to one or more FELs under subpart D of this part instead of the applicable standards, in which case, the applicable standards are replaced at each subsequent remanufacture by the FELs specified by the previous certificate. Example: a locomotive that is certified to a NO_x FEL of 8.0 g/bhp-hr must be recertified to a NO_x FEL of 8.0 g/bhp-hr at each subsequent remanufacture, except as allowed by paragraph (a)(4)(iii) of this section.

(ii) *Tier 1.* Locomotives and engines used in locomotives manufactured on, or after, January 1, 2002, and before January 1, 2005 are subject to the Tier 1 standards listed in Table A8–2 of this section. The standards apply when such a locomotive or locomotive engine is manufactured or imported, and each time it is remanufactured; except where the locomotive was previously certified to one or more FELs under subpart D of this part instead of the applicable standard, in which case, the standards are replaced at each subsequent remanufacture by the FELs specified by the previous certificate.

(iii) *Tier 2.* Locomotives and engines used in locomotives manufactured on, or after, January 1, 2005 are subject to the Tier 2 standards listed in Table A8–3 of this section. The standards apply when such a locomotive or locomotive engine is manufactured or imported, and each time it is remanufactured except where the locomotive was previously certified to one or more FELs under subpart D of this part instead of the applicable standard, in which case, the standards are replaced at each subsequent remanufacture by the FELs specified by the previous certificate.

(2) *Smoke standards.* The smoke opacity standards listed in Table A8–4 of this section apply, as specified in the table, to locomotives and locomotive engines subject to the Tier 0, Tier 1, or Tier 2 standards. Smoke emissions, when measured in accordance with the provisions of Subpart B of this part, shall not exceed the standards of Table A8–4 of this section.

(3) *Alternate standards.* In lieu of the CO and PM standards specified in paragraph (a)(1) of this section, manufacturers and remanufacturers may elect to comply with the alternate CO and PM standards listed in Table A8–5 of this section. Manufacturers and remanufacturers electing to comply with these alternate standards must comply with both the CO and PM standards listed in Table A8–5 of this section.

(4) *Averaging, banking and trading.* (i) In lieu of the NO_x and/or PM standards specified in paragraph (a)(1) of this section, manufacturers and remanufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer or remanufacturer must set family emission limits (FEL) for the applicable duty-cycle. This FEL serves as the standard for that family.

(ii) When a locomotive is certified to an FEL other than the applicable standard, it must be recertified to that same FEL at all subsequent remanufactures, except as specified otherwise in paragraph (a)(4)(iii) of this section.

(iii) After a locomotive has been certified to any given FEL other than the applicable standard, it may be recertified to a different FEL at a subsequent remanufacture, as allowed by subpart D of this part. For subsequent remanufactures (i.e. those remanufactures that occur after the recertification to a different FEL), the

locomotive must be recertified to the FEL(s) and standards that were applicable to the locomotive during its previous useful life, except where specified otherwise by subpart D of this part.

(5) *Tables.* The tables referenced in paragraphs (a)(1) through (3) of this section follow:

TABLE A8–1.—TIER 0 STANDARDS

[g/bhp-hr]

	Line-haul [1] cycle standard	Switch cycle standard
NO_X	9.5	14.0
PM	0.60	0.72
CO	5.0	8.0
THC	1.00	2.10
NMHC	1.00	2.10
THCE	1.00	2.10

[1] Line-haul standards do not apply to Tier 0 switch locomotives.

TABLE A8–2.—TIER 1 STANDARDS

[g/bhp-hr]

	Line-haul cycle standard	Switch cycle standard
NO_X	7.4	11.0
PM	0.45	0.54
CO	2.2	2.5
THC	0.55	1.20
NMHC	0.55	1.20
THCE	0.55	1.20

TABLE A8–3.—TIER 2 STANDARDS

[g/bhp-hr]

	Line-haul cycle standard	Switch cycle standard
NO_X	5.5	8.1
PM	0.20	0.24
CO	1.5	2.4
THC	0.30	0.60
NMHC	0.30	0.60
THCE	0.30	0.60

TABLE A8–4.—SMOKE STANDARDS FOR LOCOMOTIVES

[Percent Opacity]

	Steady-state	30-sec peak	3-sec peak
Tier 0	30	40	50
Tier 1	25	40	50
Tier 2	20	40	50

TABLE A8–5.—ALTERNATE CO AND PM STANDARDS

[g/bhp-hr]

	Line-haul cycle		Switch cycle	
	CO	PM	CO	PM
Tier 0	10.0	0.30	12.0	0.36
Tier 1	10.0	0.22	12.0	0.27
Tier 2	10.0	0.10	12.0	0.12

(b) No crankcase emissions shall be discharged directly into the ambient atmosphere from any new locomotive or new locomotive engine. Discharge of crankcase emissions into the engine exhaust complies with this prohibition, provided crankcase emissions are measured and included with exhaust emissions. Compliance with this standard is required throughout the entire service life of the locomotive or locomotive engine.

(c) *Notch standards.* (1) Exhaust emissions from locomotives and locomotive engines shall not exceed the notch standards set forth in paragraph (c)(2) of this section, except as allowed in paragraph (c)(3) of this section, when measured using any test procedures under any test conditions.

(2) Notch standards for each pollutant for each notch are calculated from the certified notch emission rate as follows:

$$\text{Notch standard} = (E_x) \times (1.1 + (1 - E_{LHx}/\text{std}))$$

Where:

E_x=The deteriorated brake-specific emission rate (for pollutant x) for the notch (i.e., the brake-specific emission rate calculated under subpart B of this part, multplied by the deterioration factor in the application for certification expressed as a multiplicative deterioration factor); where x is NO_X, HC (or NMHC or THCE, as applicable), CO or PM.

E_{LHx}=The deteriorated line-haul duty-cycle weighted brake-specific emission rate for pollutant x, as reported in the application for certification.

std=The applicable line-haul duty-cycle standard, or the certified line-haul duty-cycle FEL for locomotives or locomotive engines participating in the averaging, banking and trading program for NOx or PM.

(3) Where exhaust emissions exceed the notch standards set forth in paragraph (c)(2) of this section, the locomotive or locomotive engine is considered to be in compliance with such standards only if:

(i) The same emission controls are applied during the test conditions causing the noncompliance as were applied during certification test conditions (and to the same degree); or

(ii) The exceeding emissions result from a design feature that was described (including its effect on emissions) in the approved application for certification, and is necessary for safety or is otherwise allowed by this part.

§ 92.9 Compliance with emission standards.

(a) The general standards in § 92.7 and the emission standards in § 92.8 apply to the emissions from new locomotives and new locomotive engines for their useful life. The useful life is specified as MW-hrs and years, and ends when either of the values (MW-hrs or years) is exceeded.

(1) The minimum useful life in terms of MW-hrs is equal to the product of the rated horsepower multiplied by 7.50. The minimum useful life in terms of years is ten years. For locomotives or locomotive engines originally manufactured before January 1, 2000 and not equipped with MW-hr meters, the minimum useful life is equal to 750,000 miles or ten years, whichever is reached first.

(2) The certifying manufacturer or remanufacturer shall specify a longer useful life if the locomotive or locomotive engine is designed to last longer than the applicable minimum useful life. A manufacturer's or remanufacturer's recommended time to remanufacture which is longer than the minimum useful life is one indicator of a longer design life.

(3) Manufacturers and remanufacturers of non-locomotive-specific engines (as defined in § 92.2) may petition the Administrator prior to certification to allow a shorter useful life for an engine family containing only non-locomotive-specific engines. This petition must include the full rationale behind the request together with any other supporting evidence. Based on this or other information, the Administrator may allow a shorter useful life.

(4) Remanufacturers of locomotive or locomotive engine configurations that have been previously certified under paragraph (a)(3) of this section to a useful life that is shorter than the value specified in paragraph (a)(1) of this section may certify to that same useful life value without request.

(b) *Certification.* Certification is the process by which manufacturers and remanufacturers apply for and obtain certificates of conformity from EPA that allow the manufacturer or remanufacturer to introduce into commerce new locomotives and/or new locomotive engines for sale or use in the U.S.

(1)(i) Compliance with the applicable emission standards by an engine family must be demonstrated by the certifying

manufacturer or remanufacturer before a certificate of conformity may be issued under § 92.208.

(A) Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in subpart B of this part, from a low mileage locomotive, or a development engine (that is equivalent in design to the locomotive engines being certified), or another low hour engine.

(B) Remanufacturers shall demonstrate compliance using emission data, measured using the procedures specified in subpart B of this part, from a low mileage remanufactured locomotive, or a development engine (that is equivalent in design to the locomotive engines being certified), or another low hour remanufactured engine that was remanufactured in the manner specified in the application for certification.

(ii) The emission values to compare with the standards shall be the emission values of a low mileage locomotive, or development engine, or low hour locomotive engine, adjusted by the deterioration factors developed in accordance with the provisions of paragraph (b)(2) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (incorporated by reference at § 92.5), to the same number of significant figures as contained in the applicable standard.

(2) Exhaust emission deterioration factors shall be determined by the certifying manufacturer or remanufacturer for each engine family. The manufacturer's or remanufacturer's determination is subject to the requirements of paragraph (b)(2)(iv) of this section. The deterioration factor relates emissions from low mileage or low hour data to emissions at the end of useful life. If certification data is obtained from a development engine, and the emissions performance of that engine is significantly different from a typical low hour engine, then the deterioration factors may be adjusted for the purpose of certification.

(i) A separate exhaust emission deterioration factor shall be established, as required, for compliance with applicable emission standards for HC, THCE, NMHC, CO, NO_X, particulate and smoke for each engine family.

(ii)(A) For locomotives or locomotive engines not utilizing aftertreatment technology (e.g., catalyst). For HC, THCE, NMHC, CO, NO_X, and PM, additive deterioration factors shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer or remanufacturer is less than zero, it shall be zero for the purposes of this section.

(B) For locomotives or locomotive engines utilizing aftertreatment technology (e.g., catalyst). For HC, THCE, NMHC, CO, NO_X, and PM, Multiplicative deterioration factors shall be used; that is deterioration factors that when multiplied by the low mileage emission rate equal the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer or remanufacturer is less than one, it shall be one for the purposes of this paragraph (b).

(C) For all locomotives and locomotive engines. For smoke, additive deterioration factors shall be used. However, if the deterioration factor supplied by the manufacturer or remanufacturer is less than zero, it shall be zero for the purposes of this paragraph (b).

(iii) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–93a (incorporated by reference at § 92.5). In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29–93a (incorporated by reference at § 92.5).

(iv) Every deterioration factor must be, in the Administrator's judgement, consistent with emissions increases observed in-use based on emission testing of similar locomotives or locomotive engines. Deterioration factors that predict emission increases over the useful life of a locomotive or locomotive engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar locomotives or locomotive engines shall not be used.

§ 92.10 Warranty period.

Warranties imposed by § 92.1107 shall apply for at least the first third of the full useful life of the locomotive or locomotive engine, or for the same period during which the manufacturer or remanufacturer provides any other mechanical warranty, whichever is longer. A copy of the manufacturer's or remanufacturer's warranty shall be submitted with the application for certification.

§ 92.11 Compliance with emission standards in extraordinary circumstances.

The provisions of this section are intended to address problems that could occur near the date on which more stringent emission standards become effective, such as the transition from the Tier 1 standards to the Tier 2 standards on January 1, 2005.

(a) In appropriate extreme and unusual circumstances which are clearly outside the control of the manufacturer and which could not have been avoided by the exercise of prudence, diligence, and due care, the Administrator may permit a manufacturer, for a brief period, to introduce into commerce locomotives which do not comply with the applicable emission standards if:

(1) The locomotives cannot reasonably be manufactured in such a manner that they would be able to comply with the applicable standards;

(2) The manufacture of the locomotives was substantially completed prior to the applicability date of the standards from which the manufacturer seeks relief;

(3) Manufacture of the locomotives was previously scheduled to be completed at such a point in time that locomotives would have been included in the previous model year, such that they would have been subject to less stringent standards, and that such schedule was feasible under normal conditions;

(4) The manufacturer demonstrates that the locomotives comply with the less stringent standards that applied to the previous model year's production described in paragraph (a)(3) of this section, as prescribed by subpart C of this part (i.e., that the locomotives are identical to locomotives certified in the previous model year);

(5) The manufacturer exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity; and

(6) The manufacturer receives approval from EPA prior to introducing the locomotives into commerce.

(b) Any manufacturer seeking relief under this section shall notify EPA as soon as it becomes aware of the extreme or unusual circumstances.

(c)(1) Locomotives for which the Administrator grants relief under this section shall be included in the engine family for which they were originally intended to be included.

(2) Where the locomotives are to be included in an engine family that was certified to an FEL above the applicable standard, the manufacturer shall reserve credits to cover the locomotives covered by this section, and shall include the required information for these locomotives in the end-of-year report required by subpart D of this part.

(d) In granting relief under this section, the Administrator may also set other conditions as he/she determines to be appropriate, such as requiring payment of fees to negate an economic gain that such relief would otherwise provide to the manufacturer.

§ 92.12 Interim provisions.

Notwithstanding other provisions of this part, the following provisions apply as specified to locomotives and locomotive engines subject to the provisions of this part:

(a) *Tier 0 standards.* In addition to the requirements of § 92.8(a)(1)(i), the following new locomotives and new locomotive engines are subject to the Tier 0 emission standards of § 92.8. The requirements of this paragraph do not apply to passenger locomotives. The requirements of this paragraph (a) provide manufacturers of freshly manufactured locomotives two options for compliance. The first option is to comply with the requirements of paragraphs (a)(1) and (2) of this section, which has the effect of requiring compliance with Tier 0 standards on average beginning on January 1, 2001 for all freshly manufactured and remanufactured locomotives originally manufactured on or after January 1, 1994. The second option requires compliance with the requirements of paragraph (a)(3) of this section that the manufacturer make a remanufacturing system available at a reasonable cost for its primary model for the 1994 through 1997 production period prior to January 1, 2000, and to apply the same emission controls to its new production of similar locomotives. Manufacturers complying with paragraph (a)(3) of this section would be allowed to manufacture and remanufacture other locomotives without a certificate of conformity, prior to January 1, 2002, except as required by paragraph (a)(2)(ii) of this section. Manufacturers may comply with paragraph (a)(3) of this section through compliance with the provisions of paragraph (a)(5) of this section.

(1) *Freshly manufactured locomotives.* Except as provided in paragraph (a)(3) of this section, all freshly manufactured locomotives manufactured on or after January 1, 2001 must comply with the emission standards listed in Table A8–1 of § 92.8 and all other applicable requirements of this part.

(2) *Remanufactured locomotives.* The following locomotives (and engines used in the following locomotives) must comply with the emission standards listed in Table A8–1 of § 92.8 and all other applicable requirements of this part:

(i) Locomotives originally manufactured on or after January 1, 1994, that are remanufactured on or after January 1, 2001; and

(ii) Locomotives originally manufactured on or after January 1, 1990 for which a remanufacturing system has been certified to Tier 0 standards and is available for use at reasonable cost.

(3) *New model exemption.* (i) Freshly manufactured locomotive models not introduced for widespread production prior to January 1, 1998 are exempt from the requirements of paragraph (a)(1) of this section provided the manufacturer of the locomotive:

(A) Has obtained a certificate of conformity and made available for use at reasonable cost before January 1, 2000, a remanufacturing system for its primary locomotive model (including its primary engine model) originally manufactured between January 1, 1994 and January 1, 1998; and

(B) Complies with the emission standards listed in Table A8–1 of § 92.8 and all applicable requirements of this part for all freshly manufactured locomotives manufactured on or after January 1, 2000 that are similar to the primary model described in paragraph (a)(3)(i)(A) of this section.

(ii) New locomotives and locomotive engines that are manufactured and remanufactured by a manufacturer that complies with the requirements of paragraphs (a)(3)(i)(A) and (B) of this section, and that are not similar to the locomotive models identified in paragraphs (a)(3)(i)(A) and (B) of this section are exempt from the requirements of paragraphs (a)(1) and (a)(2)(i) of this section.

(4) Make available at a reasonable cost means to make a certified remanufacturing system available for use where:

(i) The total cost to the owner and user of the locomotive (including initial hardware, increased fuel consumption, and increased maintenance costs) during the useful life of the locomotive is less than $220,000; and

(ii) The initial hardware costs are reasonably related to the technology included in the remanufacturing system and are less than $50,000 for 2-stroke locomotives and 4-stroke locomotives equipped with split cooling systems, or $125,000 for 4-stroke locomotives not equipped with split cooling systems; and

(iii) The system will not increase fuel consumption by more than 3 percent; and

(iv) The remanufactured locomotive will have reliability throughout its useful life that is similar to the reliability the locomotive would have had if it had been remanufactured without the certified remanufacture system.

(5)(i) Instead of the provisions of paragraph (a)(3) of this section, a manufacturer may comply with the emissions standards listed in Table A8–1 of § 92.8 and all other applicable requirements of this part with respect to any combination of locomotive models that are manufactured or remanufactured on or after January 1, 2000, provided that the manufacturer has demonstrated to the satisfaction of the Administrator that such locomotives will produce greater emissions reductions than would otherwise occur through compliance with paragraph (a)(3) of this section.

(ii) New locomotives and locomotive engines that are manufactured and remanufactured by a manufacturer that complies with the requirements of paragraph (a)(5)(i) of this section, and that are not similar to the locomotive models identified in paragraph (a)(5)(i) of this section, are exempt from the requirements of paragraphs (a)(1) and (a)(2)(i) of this section.

(b) *Production line and in-use testing.* (1) The requirements of subpart F of this part (i.e., production line testing) do not apply prior to January 1, 2002.

(2) The requirements of subpart F of this part (i.e., production line testing) do not apply to small remanufacturers prior to January 1, 2007.

(3) The requirements of subpart G of this part (i.e., in-use testing) only apply for locomotives and locomotive engines that become new on or after January 1, 2002.

(4) For locomotives and locomotive engines that are covered by a small business certificate of conformity, the requirements of subpart G of this part (i.e., in-use testing) only apply for locomotives and locomotive engines that become new on or after January 1, 2007.

(c) *Small business certificates of conformity.* (1) Prior to January 1, 2007, small remanufacturers (as defined in § 92.2) may use a modified version of the federal test procedures of subpart B of this part to obtain certificates of conformity. Such certificates are valid only for production that occurs prior to January 1, 2007. Specifically, the following modifications are allowed:

(i) Measurement of HC, CO, and PM may be omitted;

(ii) Dynamometers are not required to meet the specifications of subpart B of this part, provided their design and use is consistent with good engineering practice;

(iii) Other modifications that are necessary because of excessive costs or technical infeasibility may be approved by the Administrator prior to the start of testing.

(2)(i) Small remanufacturers may use test procedures other than those specified in subpart B of this part or in paragraph (c)(1) of this section to obtain certificates of conformity, provided that the test procedures are consistent with good engineering practice, and are approved by the Administrator prior to the start of testing. Such certificates are valid only for production that occurs prior to January 1, 2007.

(ii) The total number of locomotives and locomotive engines that may be remanufactured under a certificate of conformity issued based on the testing described in paragraph (c)(2)(i) of this section shall be subject to the following annual limits for each individual remanufacturer: no more than 300 units in 2003, no more than 200 units in 2004, no more than 100 units in 2005, no more than 50 units in 2006. These sales limits apply to the combined number of locomotives and locomotive engines remanufactured within the calendar year that are covered by an individual remanufacturer's certificates issued under paragraph (c)(2)(i) of this section.

(3) Upon request, and prior to January 1, 2007, the Administrator may modify other certification requirements, as appropriate, for small remanufacturers.

(4) Remanufacturers certifying under this paragraph (c) shall provide along with their application for certification a brief engineering analysis describing the emission control technology to be incorporated in the remanufactured locomotive or locomotive engine, and demonstrating that such controls will result in compliance with the applicable standards.

(d) *Early banking of emission credits.* (1) Consistent with the provisions of subpart D of this part, NOx and PM emission credits may be generated from Tier 0 locomotives and locomotive engines prior to the applicable effective compliance date of the Tier 0 standard (i.e., the effective compliance date in § 92.8(a)(1)(i) or the effective compliance dates of paragraph (a) of this section, as applicable), relative to baseline emission rates.

(2)(i) Credits generated under this paragraph (d) that are granted or transferred to the owner or primary operator of the locomotives or locomotive engines generating credits may be used without restriction.

(ii) Credits generated under this paragraph (d) that are not granted or transferred to the owner or primary operator of the locomotives or locomotive engines generating credits may not be used for compliance with the Tier 0 standards for 2002 or later model years.

(3)(i) Prior to January 1, 2000, the provisions of this paragraph (d) apply to all locomotives and locomotive engines.

(ii) During the period January 1, 2000 through December 31, 2001, the provisions of this paragraph (d) apply only to engine families that include only locomotives and/or locomotive engines originally manufactured prior to January 1, 1990.

(iii) The provisions of this paragraph (d) other than the provisions of paragraph (d)(2) of this section do not apply to any locomotives and locomotive engines manufactured or remanufactured on or after January 1, 2002.

(4)(i) NO_X credits generated under this paragraph (d) shall be calculated as specified in § 92.305, except that the applicable standard shall be replaced by:

(A) 10.5 g/bhp-hr for the line-haul cycle standards, and 14.0 g/bhp-hr for the switch standards; or

(B) For remanufactured locomotives, a measured baseline emission rate for the configuration with the lowest NO_X emission rate in the applicable engine family that is approved in advance by the Administrator.

(ii) PM credits generated under this paragraph (d) shall be calculated as specified in § 92.305, except that the applicable standard shall be replaced by:

(A) 0.20 g/bhp-hr for the line-haul cycle standards, and 0.24 g/bhp-hr for the switch standards; or

(B) For remanufactured locomotives, a measured baseline emission rate for the configuration with the lowest NO_X emission rate in the applicable engine family that is approved in advance by the Administrator.

(iii) The proration factor for all credits generated under this paragraph (d) shall be 0.143.

(5) Locomotives and locomotive engines generating credits under this paragraph (d) must meet all applicable requirements of this part.

(e) *Particulate notch standards.* For model year 2006 and earlier locomotives, the particulate notch standard shall be calculated as:

$$\text{Notch standard} = (E_X) \times (1.2 + (1 - E_{LHx}/\text{std}))$$

(f) *Passenger locomotives.* Passenger locomotives originally manufactured before January 1, 2002 are exempt from the requirements and prohibitions of this part for model years through 2006. New passenger locomotives and locomotive engines produced on or after January 1, 2007 shall comply with all applicable requirements of this part.

Subpart B—Test Procedures

§ 92.101 Applicability.

Provisions of this subpart apply to tests performed by the Administrator, certificate holders, other manufacturers and remanufacturers of locomotives or locomotive engines, railroads (and other owners and operators of locomotives), and their designated testing laboratories. This subpart contains gaseous emission test procedures, particulate emission test procedures, and smoke test procedures for locomotives and locomotive engines.

§ 92.102 Definitions and abbreviations.

The definitions and abbreviations of subpart A of this part apply to this subpart. The following definitions and abbreviations, as well as those found in § 92.132 (Calculations), also apply:

Accuracy means the difference between the measured value and the true value, where the true value is determined from NIST traceable measurements where possible, or otherwise determined by good engineering practice.

Calibration means the act of calibrating an analytical instrument using known standards.

Calibration gas means a gas of known concentration which is used to establish the response curve of an analyzer.

Good engineering practice means those methods and practices which the Administrator determines to be consistent with scientific and engineering principles.

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.

Parts per million, carbon or *ppmC* means the concentration of an organic compound in a gas expressed as parts per million (by volume or by moles) multiplied by the number of carbon atoms in a molecule of that compound.

Precision means the standard deviation of replicated measurements, or one-half of the readability, whichever is greater; except where explicitly noted otherwise.

Readability means the smallest difference in measured values that can be detected. For example, the readability for a digital display with two decimal places would be 0.01.

Span gas means a gas of known concentration which is used routinely to set the output level of an analyzer.

Standard conditions and *standard temperature and pressure* mean 68 °F (20 °C) and 29.92 in Hg. (101.3 kPa).

§ 92.103 Test procedures; overview.

(a) This subpart contains procedures for exhaust emission tests of locomotives and locomotive engines. The procedures specified here are intended to measure brake-specific mass emissions of organic compounds (hydrocarbons for locomotives using petroleum diesel fuel), oxides of nitrogen, particulates, carbon monoxide, carbon dioxide, and smoke in a manner representative of a typical operating cycle.

(b)(1) The sampling systems specified in this subpart are intended to collect representative samples for analysis, and minimize losses of all analytes.

(i) For gaseous emissions, a sample of the raw exhaust is collected directly from the exhaust stream and analyzed during each throttle setting.

(ii) Particulates are collected on filters following dilution with ambient air of a separate raw exhaust sample.

(2) Analytical equipment is identical for all fuel types; with the exception of the systems used to measure organics (*i.e.*, hydrocarbons, alcohols, and aldehydes); diesel-fueled and biodiesel-fueled locomotives *Parts per million* and locomotive engines require a heated, continuous hydrocarbon detector; natural gas-fueled locomotives and locomotive engines require a continuous hydrocarbon detector and a methane detector; alcohol-fueled locomotives and locomotive engines require a heated hydrocarbon detector, alcohol sampling and detection systems, and aldehyde sampling and detection systems. Necessary equipment and specifications appear in §§ 92.105 through 92.111.

(3) Fuel specifications for emission testing are specified in § 92.113. Analytical gases are specified in § 92.112.

(c) The power produced by the engine is measured at each throttle setting.

(d) The fuel flow rate for each throttle setting is measured in accordance with § 92.107.

(e) Locomotives and locomotive engines are tested using the test sequence as detailed in §§ 92.124 and 92.126.

(f) Alternate sampling and/or analytical systems may be used if shown to yield equivalent results, and if approved in advance by the Administrator. Guidelines for determining equivalency are found in Appendix IV of this part.

(g) At the time of the creation of this part, essentially all locomotives and locomotive engines subject to the standards of this part were designed to use diesel fuel. Therefore, the testing provisions of this subpart focus primarily on that fuel. Some provisions for fuels other than diesel are also included. If a manufacturer or remanufacturer of locomotives or locomotive engines, or a user of locomotives, or other party wishes or intends to use a fuel other than diesel in locomotives or locomotive engines, it shall notify the Administrator, who shall specify those changes to the test procedures that are necessary for the testing to be consistent with good engineering practice. The changes made under this paragraph (g) shall be limited to:

(1) Exhaust gas sampling and analysis;

(2) Test fuels; and

(3) Calculations.

§ 92.104 Locomotive and engine testing; overview.

(a) The test procedures described here include specifications for both locomotive testing and engine testing. Unless specified otherwise in this subpart, all provisions apply to both locomotive and engine testing.

(b)(1) The test procedures for engine testing are intended to produce emission measurements that are essentially identical to emission measurements produced during locomotive testing using the same engine configuration. The following requirements apply for all engine tests:

(i) Engine speed and load for each mode shall be within 2 percent of the speed and load of the engine when it is operated in the locomotive.

(ii) The temperature of the air entering the engine after any charge air cooling shall be within 5 °F of the typical intake air temperature when the engine is operated in the locomotive under similar ambient conditions. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer.

(iii) The engine air inlet system used during testing shall have an air inlet restriction within 1 inch of water of the upper limit of a typical engine as installed with clean air filters, as established by the manufacturer or remanufacturer for the engine being tested.

(2) Testers performing engine testing under this subpart shall not use test procedures otherwise allowed by the provisions of this subpart where such procedures are not consistent with good engineering practice and the regulatory goal specified in paragraph (b)(1) of this section.

(c) Provisions that specify different requirements for locomotive and/or engine testing are described in §§ 92.106, 92.108(a) and (b)(1), 92.111(b)(2) and (c), 92.114(a)(2)(ii), (b)(3)(ii), (c)(2)(iii)(A) and (d), 92.115(c), 92.116, 92.123(a)(2) and (b), 92.124(d), 92.125(a) and (b), 92.126(a)(7)(iii)(A).

§ 92.105 General equipment specifications.

(a) *Chart recorders.* (1) The recommended minimum chart speed for gaseous measurements is 1 cm per minute. (Higher chart speeds are required for smoke measurements during the acceleration phases of the test sequence.)

(2) All chart recorders (analyzers, torque, rpm, etc.) shall be provided with automatic markers which indicate ten second intervals. Preprinted chart paper (ten second intervals) may be used in lieu of the automatic markers provided the correct chart speed is used. (Markers which indicate 1 second intervals are required for smoke measurements during the acceleration phases of the test sequence.)

(b) *Automatic data collection.* (1) In lieu of the use of chart recorders, automatic data collection equipment may be used to record all required data. The automatic data collection equipment must be capable of sampling at least two records per second.

(2) Other means may be used provided they produce a permanent visual data record of a quality equal to or better than those required by this subpart (e.g., tabulated data, traces, or plots).

(c) *Temperature measurements.* (1) The following temperature measurements shall be accurate to within 1.0 °F (0.6 °C):

(i) Temperature measurements used in calculating the engine intake humidity;

(ii) The temperature of the fuel, in volume measuring flow rate devices;

(iii) The temperature of the sample within the water trap(s);

(iv) Temperature measurements used to correct gas volumes (e.g., to standard conditions) or to calculate mass or moles of a sample.

(2) All other temperature measurements shall be accurate within 3.0 °F (1.7 °C).

(d) *Electrical measurements.* (1) Voltmeters shall have accuracy and precision of 1 percent of point or better.

(2) Ammeters shall have accuracy and precision of 1 percent of point or better.

(3) Wattmeters shall have accuracy and precision of 1 percent of point or better.

(4) Instruments used in combination to measure engine power output shall comply with the requirements of § 92.106.

(e) *Pressure measurements.* (1) Gauges and transducers used to measure any pressures used to correct gas volumes (e.g., to standard conditions) or to calculate mass or moles of a sample shall have an accuracy and precision of 0.1 percent of absolute pressure at point or better.

(2) Gauges and transducers used to measure any other pressures shall have an accuracy and precision of 1 percent of absolute pressure at point or better.

§ 92.106 Equipment for loading the engine.

For purposes of placing the required load on the engine during an emissions test, either the equipment specified in paragraph (a) of this section, or the equipment specified in paragraph (b) of this section may be used.

(a) *Locomotive testing.* (1) The equipment required for loading the locomotive engine-alternator/generator assembly electrically, and for measurement of the electrical power output from the alternator/generator consists of the following, either in total or in part: electrical resistance load bank; fans or other means for cooling of the load bank; wattmeter, including phase angle compensation; meter(s) for measurement of the current through the load bank (a calibrated electrical shunt and voltmeter is allowed for current measurement); meter(s) to measure the voltage across the load bank; and electrical cable to connect the alternator/generator to the load bank. Many locomotives are equipped with an internal electrical resistance load bank and fans for cooling of the load bank; when so equipped, the locomotive load bank may be used for purposes of loading the engine during emissions tests.

(2) The combination of instruments (meters) used to measure engine or alternator/generator power output (wattmeter, ammeter, voltmeter) shall have accuracy and precision such that the accuracy of the measured alternator/generator power out is better than:

(i) 2 percent of point at all power settings except idle and dynamic brake; and

(ii) Less accuracy and precision is allowed at idle and dynamic brake, consistent with good engineering practice. Equipment with accuracy or precision worse than 20 percent of point is not allowed.

(3) The efficiency curve for the alternator/generator, shall specify the efficiency at each test point. The manufacturer or remanufacturer shall provide EPA with a detailed description of the procedures used to establish the alternator/generator efficiency.

(b) *Engine testing.* (1) For engine testing using a dynamometer, the engine dynamometer system must be capable of controlling engine torque and speed simultaneously under steady speed operation, during accelerations where the rate of change in torque and speed is representative of those changes which occur when the engine is operating in a locomotive. It must also be capable of performing the test sequence described in this subpart. In addition to these general requirements, the engine or dynamometer readout signals for speed and torque shall meet the following accuracy specifications:

(i) Engine speed readout shall be accurate to within ±2 percent of the absolute standard value, as defined in § 92.116 of this part.

(ii) Engine flywheel torque readout shall be accurate to either within ±3 percent of the NIST "true" value torque, or the following accuracies, whichever provides the most accurate readout:

(A) ±20 ft.-lbs. of the NIST "true" value if the full scale value is 9000 ft.-lbs. or less.

(B) ±30 ft.-lbs., of the NIST "true" value if the full scale value is greater than 9000 ft.-lbs.

(C) *Option.* Internal dynamometer signals (i.e., armature current, etc.) may be used for torque measurement provided that it can be shown that the engine flywheel torque during the test sequence conforms to the accuracy specifications in paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section. Such a measurement system must include compensation for increased or decreased flywheel torque due to the armature inertia during accelerations between throttle notch (test mode) settings in the test.

(2) For engine testing using a locomotive alternator/generator instead of a dynamometer, the equipment used shall comply with the requirements of paragraph (a) of this section.

§ 92.107 Fuel flow measurement.

(a) *Fuel flow measurement for locomotive and engine testing.* The rate of fuel consumption by the engine must be measured with equipment conforming to the following:

(1) The fuel flow rate measurement instrument must have a minimum accuracy of ±2 percent of measurement flow rate for each measurement range used. An exception is allowed at idle where the minimum accuracy is ±10 percent of measured flow rate for each measurement range used. The measurement instrument must be able to comply with this requirement with an averaging time of one minute or less, except for idle, dynamic brake, and notches 1 and 2 where the instrument must be able to comply with this requirement with an averaging time of three minutes or less.

(2) The controlling parameters are the elapsed time measurement of the event and the weight or volume measurement. Restrictions on these parameters are:

(i) The error in the elapsed time measurement of the event must not be greater than 1 percent of the absolute event time. This includes errors in starting and stopping the clock as well as the period of the clock.

(ii) If the mass of fuel consumed is measured by discrete weights, then the error in the actual weight of the fuel consumed must not be greater than ±1 percent of the measuring weight. An exception is allowed at idle, where the error in the actual weight of the fuel consumed must not be greater than ±2 percent of the measuring weight.

(iii) If the mass of fuel consumed is measured electronically (load cell, load beam, etc.), the error in the actual weight of fuel consumed must not be greater than ±1 percent of the full-scale value of the electronic device.

(iv) If the mass of fuel consumed is measured by volume flow and density, the error in the actual volume consumed must not be greater than ±1 percent of the full-scale value of the volume measuring device.

(3) For devices that have varying mass scales (electronic weight, volume, density, etc.), compliance with the requirements of paragraph (a)(1) of this section may require a separate flow measurement system for low flow rates.

(b) *Calibration.* Fuel flow rate measurement devices shall be calibrated against an independent measurement of the total mass of fuel dispensed during a fixed amount of time in accordance with the following provisions:

(1) Measurement of the total mass shall have an accuracy and precision of 1 percent of point, or better.

(2) Fuel measurements shall be performed for at least 10 flow rates evenly distributed over the entire range of fuel flow rates used during testing.

(3) For each flow rate, either the total mass of fuel dispense must exceed 5.0 kilograms (11.0 pounds), or the length of time during which the fuel is dispensed must exceed 30 minutes. In all cases, the length of time during which fuel is dispensed must be at least 180 seconds.

§ 92.108 Intake and cooling air measurements.

(a) *Intake air flow measurement.* Measurement of the flow rate of intake air into the engine is allowed for engine testing, but not required. When it is measured, the measurement technique shall conform to the following:

(1) The air flow measurement method used must have a range large enough to accurately measure the air flow over the engine operating range during the test. Overall measurement accuracy must be ±2 percent of full-scale value of the measurement device for all modes except idle. For idle, the measurement accuracy shall be ±5 percent or less of the full-scale value. The Administrator must be advised of the method used prior to testing.

(2) Corrections to the measured air mass flowrate shall be made when an engine system incorporates devices that add or subtract air mass (air injection, bleed air, etc.). The method used to determine the air mass from these devices shall be approved by the Administrator.

(3) Measurements made in accordance with SAE recommended practice J244 (incorporated by reference at § 92.5) are allowed.

(b) *Humidity and temperature measurements.*

(1) Air that has had its absolute humidity altered is considered humidity-conditioned air. For this type of intake air supply, the humidity measurements must be made within the intake air supply system, and after the humidity conditioning has taken place.

(2) Humidity measurements for non-conditioned intake air supply systems shall be made as closely as possible to the point at which the intake air stream enters the locomotive, or downstream of that point.

(3) Temperature measurements of engine intake air, engine intake air after compression and cooling in the charge air cooler(s) (engine testing only), and air used to cool the charge air after compression, and to cool the engine shall be made as closely as possible to obtain accurate results based on engineering judgement. Measurement of ambient temperature for locomotive testing shall be made within 48 inches of the locomotive, at a location that minimizes the effect of heat generated by the locomotive on the measured temperature.

(4) Temperature measurements shall comply with the requirements of § 92.105(c).

(5) Humidity measurements shall be accurate within 2 percent of the measured absolute humidity.

§ 92.109 Analyzer specifications.

(a) *General analyzer specifications.*—(1) *Analyzer response time.* Analyzers for THC, CO_2, CO, and NO_X must respond to an instantaneous step change at the entrance to the analyzer with a response equal to 95 percent of that step change in 6.0 seconds or less on all ranges used. The step change shall be at least 60 percent of full-scale chart deflection. For NO_X analyzers using a water trap, the response time increase due to the water trap and associated plumbing need not be included in the analyzer response time.

(2) *Precision.* The precision of the analyzers for THC, CO_2, CO, and NO_X must be no greater than ±1 percent of full-scale concentration for each range used above 155 ppm (or ppmC), or ±2 percent for each range used below 155 ppm (or ppmC). The precision is defined as 2.5 times the standard deviation(s) of 10 repetitive responses to a given calibration or span gas.

(3) *Noise.* The analyzer peak-to-peak response to zero and calibration or span gases over any 10-second period shall not exceed 2 percent of full/scale chart deflection on all ranges used.

(4) *Zero drift.* For THC, CO_2, CO, and NO_X analyzers, the zero-response drift during a 1-hour period shall be less than 2 percent of full-scale chart deflection on the lowest range used. The zero-response is defined as the mean response including noise to a zero-gas during a 30-second time interval.

(5) *Span drift.* For THC, CO_2, CO, and NO_X analyzers, the span drift during a 1-hour period shall be less than 2 percent of full-scale chart deflection on the lowest range used. The analyzer span is defined as the difference between the span-response and the zero-response. The span-response is defined as the mean response including noise to a span gas during a 30-second time interval.

(b) *Carbon monoxide and carbon dioxide analyzer specifications.* (1) Carbon monoxide and carbon dioxide measurements are to be made with nondispersive infrared (NDIR) analyzers.

(2) The use of linearizing circuits is permitted.

(3) The minimum water rejection ratio (maximum CO_2 interference) as measured in § 92.120(a) shall be:

(i) For CO analyzers, 1000:1.

(ii) For CO_2 analyzers, 100:1.

(4) The minimum CO_2 rejection ratio (maximum CO_2 interference) as measured in § 92.120(b) for CO analyzers shall be 5000:1.

(5) *Zero suppression.* Various techniques of zero suppression may be used to increase readability, but only with prior approval by the Administrator.

(6) Option: if the range of CO concentrations encountered during the different test modes is too broad to allow accurate measurement using a single analyzer, then multiple CO analyzers may be used.

(c) *Hydrocarbon analyzer specifications.* (1) Hydrocarbon measurements are to be made with a heated flame ionization detector (HFID) analyzer. An overflow sampling system is recommended but not required. (An overflow system is one in which excess zero gas or span gas spills out of the probe when zero or span checks of the analyzer are made.

(i) *Option.* A non-heated flame ionization detector (FID) that measures hydrocarbon emissions on a dry basis is permitted for petroleum fuels other than diesel and biodiesel; Provided, that equivalency is demonstrated to the Administrator prior to testing. With the exception of temperatures, all specifications contained in Subpart B of this part apply to the optional system.

(ii) The analyzer shall be fitted with a constant temperature oven housing the detector and sample-handling components. It shall maintain temperature with 3.6 °F (2 °C) of the set point. The detector, oven, and sample-handling components within the oven shall be suitable for continuous operation at temperatures to 395°F (200 °C).

(iii) Fuel and burner air shall conform to the specifications in § 92.112(e).

(iv) The percent of oxygen interference must be less than 3 percent, as specified in § 92.119(3).

(v) *Premixed burner air.* (A) For diesel and biodiesel fueled engines, premixing a small amount of air with the HFID fuel prior to combustion within the HFID burner is not recommended as a means of improving oxygen interference ($\%O_2I$). However, this procedure may be used if the engine manufacturer demonstrates on each basic combustion system (i.e., four-cycle direct injection, two-cycle direct injection, four-cycle indirect injection, etc.) that an HFID using this procedure produces comparable results to an HFID not using this procedure. These data must be submitted to the Administrator for his/her approval prior to testing.

(B) For engines operating on fuels other than diesel or biodiesel, premixing burner air with the HFID fuel is not allowed.

(2) *Methane analyzer.* The analytical system for methane consists of a gas chromatograph (GC) combined with a flame ionization detector (FID).

(3) *Alcohols and Aldehydes.* The sampling and analysis procedures for alcohols and aldehydes, where applicable, shall be approved by the Administrator prior to the start of testing. Procedures consistent with the general requirements of 40 CFR Part 86 for sampling and analysis of alcohols and aldehydes emitted by on-highway alcohol-fueled engines, and consistent with good engineering practice are allowed.

(4) Other methods of measuring organics that are shown to yield equivalent results can be used upon approval of the Administrator prior to the start of testing.

(d) *Oxides of nitrogen analyzer specifications.* (1) Oxides of nitrogen are to be measured with a chemiluminescence (CL) analyzer.

(i) The NO_X sample must be heated per § 92.114 up to the NO_2 to NO converter.

(ii) For high vacuum CL analyzers with heated capillary modules, supplying a heated sample to the capillary module is sufficient.

(iii) The NO_2 to NO converter efficiency shall be at least 90 percent.

(iv) The CO_2 quench interference must be less than 3.0 percent as measured in § 92.121(a).

§ 92.110 Weighing chamber and microbalance.

(a) *Ambient conditions.*—(1) *Temperature.* The temperature of the chamber (or room) in which the particulate filters are conditioned and weighed shall be maintained at a measured temperature between 19°C and 25°C during all filter conditioning and weighing.

(2) *Humidity.* The relative humidity of the chamber (or room) in which the particulate filters are conditioned and weighed shall be 45±8 percent during all filter conditioning and weighing. The dew point shall be 6.4 to 12.4°C.

(b) *Weighing balance specifications.* The microbalance used to determine the weights of all filters shall have a precision (standard deviation) of no more than 20 micrograms and readability down to 10 micrograms or lower.

(c) *Reference filters.* The chamber (or room) environment shall be free of any ambient contaminants (such as dust) that would settle on the particulate filters during their stabilization. It is required that at least two unused reference filters remain in the weighing room at all times in covered (to reduce dust contamination) but unsealed (to permit humidity exchange) petri dishes.

(1) These reference filters shall be placed in the same general area as the sample filters. These reference filters shall be weighed within 4 hours of, but preferably at the same time as, the sample filter weighings.

(2) If the average weight of the reference filters changes between sample filter weighings by ±5.0 percent (±7.5 if the filters are weighed in pairs) or more of the target nominal filter loading (the recommended nominal loading is 0.5 milligrams per 1075 square millimeters of stain area), then all sample filters in the process of stabilization shall be discarded and the emissions tests repeated.

(3) If the average weight of the reference filters decreases between sample filter weighings by more than 1.0 percent but less than 5.0 percent of the nominal filter loading then the manufacturer or remanufacturer has the option of either repeating the emissions test or adding the average amount of weight loss to the net weight of the sample.

(4) If the average weight of the reference filters increases between sample filter weighing by more than 1.0 percent but less than 5.0 percent of the nominal filter loading, then the manufacturer or remanufacturer has the option of either repeating the emissions test or accepting the measured sample filter weight values.

(5) If the average weight of the reference filters changes between sample filter weighings by not more than ±1.0 percent, then the measured sample filter weights shall be used.

(6) The reference filters shall be changed at least once a month, but never between clean and used weighings of a given sample filter. More than one set of reference filters may be used. The reference filters shall be the same size and material as the sample filters.

§ 92.111 Smoke measurement system.

(a) *Schematic drawing.* Figure B111–1 of this section is a schematic drawing of the optical system of the light extinction meter, as follows:

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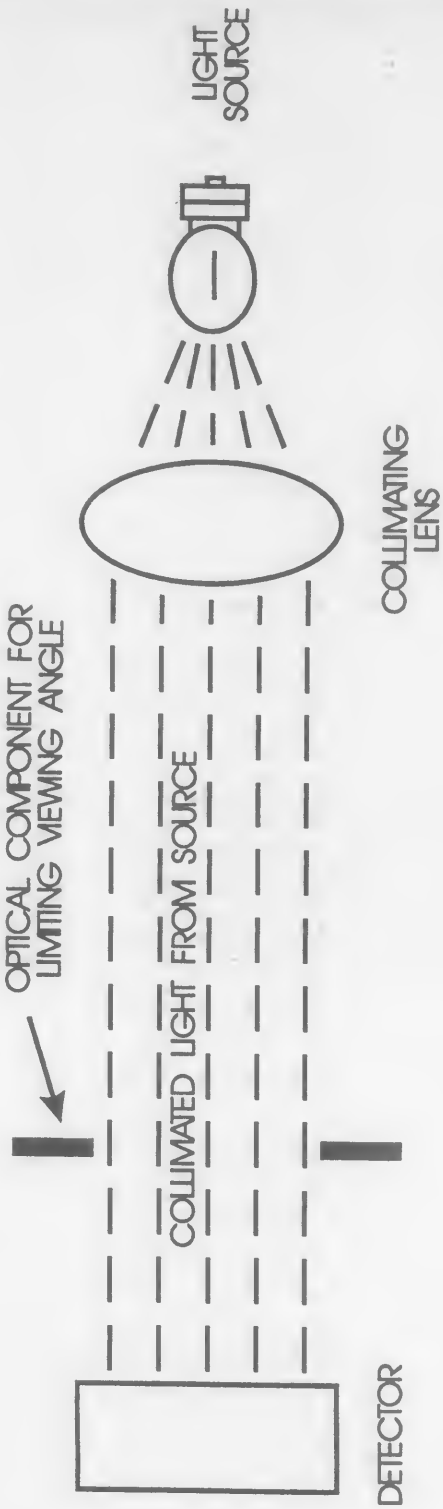

Figure B111-1 SMOKEMETER OPTICAL SYSTEM (SCHEMATIC)

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(b) *Equipment.* The following equipment shall be used in the system.

(1) *Adapter.* The smokemeter optical unit may be mounted on a fixed or movable frame. The normal unrestricted shape of the exhaust plume shall not be modified by the adaptor, the meter, or any ventilation system used to remove the exhaust from the test site. Distortion due to the gaseous or particulate sample probes, or the exhaust duct is allowed subject to the provisions of § 92.114.

(2) *Wind shielding.* Tests shall not be conducted under excessively windy conditions. Winds are excessive if they disturb the size, shape, or location of the exhaust plume in the region where exhaust samples are drawn or where the smoke plume is measured. Tests may be conducted if wind shielding is placed adjacent to the exhaust plume to prevent bending, dispersion, or any other distortion of the exhaust plume as it passes through the optical unit.

(3) *Smokemeter, (light extinction meter).* A continuously recording, full-flow light obscuration meter shall be used.

(i) It is positioned as specified in paragraph (c) of this section, so that a built-in light beam traverses the exhaust smoke plume which issues from the duct. The light beam shall be at right angles to the axis of the plume, and in those cases were the exhaust is not circular at its discharge, the path of the light beam through the plume shall be along the longest axis of the exhaust stack which is not a diagonal of a rectangular exhaust stack.

(ii) The light source shall be an incandescent lamp with a color temperature range of 2800K to 3250K, or a light source with a spectral peak between 550 and 570 nanometers.

(iii) The light output is collimated to a beam with a nominal diameter of 1.125 inches and an angle of divergence within a 6 degree included angle.

(iv) The light detector shall be a photocell or photodiode. If the light source is an incandescent lamp, the detector shall have a spectral response similar to the photopic curve of the human eye (a maximum response in the range of 550 to 570 nanometers, to less than four percent of that maximum response below 430 nanometers and above 680 nanometers).

(v) A collimating tube with apertures equal to the beam diameter is attached to the detector to restrict the viewing angle of the detector to within a 16 degree included angle.

(vi) An amplified signal corresponding to the amount of light blocked is recorded continuously on a remote recorder.

(vii) An air curtain across the light source and detector window assemblies may be used to minimize deposition of smoke particles on those surfaces provided that it does not measurably affect the opacity of the plume.

(viii) The smokemeter consists of two units; an optical unit and a remote control unit.

(ix) Light extinction meters employing substantially identical measurement principles and producing substantially equivalent results, but which employ other electronic and optical techniques may be used only after having been approved in advance by the Administrator.

(4) *Recorder.* A continuous recorder, with variable chart speed over a minimal range of 1 to 20 cm per minute (or equivalent) and an automatic marker indicating 1-second intervals, continuously records the exhaust gas opacity and throttle position.

(i) The recorder is equipped to indicate each of the throttle notch (test mode) positions.

(ii) The recorder scale for opacity is linear and calibrated to read from 0 to 100 percent opacity full scale.

(iii) The opacity trace has a resolution within one percent opacity.

(iv) The throttle position trace clearly indicates each throttle position.

(5) The recorder used with the smokemeter shall be capable of full-scale deflection in 0.5 second or less. The smokemeter-recorder combination may be damped so that signals with a frequency higher than 10 cycles per second are attenuated. A separate low-pass electronic filter with the following performance characteristics may be installed between the smokemeter and the recorder to achieve the high-frequency attenuation:

(i) Three decibel point: 10 cycles per second.

(ii) Insertion loss: 0 ±0.5 decibel.

(iii) Selectivity: 12 decibels down at 40 cycles per second minimum.

(iv) Attenuation: 27 decibels down at 40 cycles per second minimum.

(6) Automatic data collection equipment may be used, provided it is capable of collecting data equivalent to or better than the data required by paragraphs (b)(4) and (5) of this section.

(c)(1) *Assembling equipment for locomotive testing.* The optical unit of the smokemeter shall be mounted radially to the exhaust duct so that the measurement will be made at right angles to the axis of the exhaust plume. The distance from the optical centerline to the exhaust outlet shall be minimized; in all cases it shall be less than 10 feet. The maximum allowable distance of unducted space upstream of the optical centerline is 18 inches. The full flow of the exhaust stream shall be centered between the source and detector apertures (or windows and lenses) and on the axis of the light beam.

(2) *Assembling equipment for engine testing.* The optical unit of the smokemeter shall be mounted radially to the exhaust duct so that the measurement will be made at right angles to the axis of the exhaust plume. The distance from the optical centerline to the exhaust outlet shall be less than 25 feet. The maximum allowable distance of unducted space upstream of the optical centerline is 18 inches. In-line smokemeters are allowed. The full flow of the exhaust stream shall be centered between the source and detector apertures (or windows and lenses) and on the axis of the light beam.

(d) *Power supply.* Power shall be supplied to the control unit of the smokemeter in time to allow at least 15 minutes for stabilization prior to testing.

§ 92.112 Analytical gases.

(a) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2, respectively, using zero grade nitrogen as the diluent.

(b) Gases for the hydrocarbon analyzer shall be single blends of propane using zero grade air as the diluent.

(c) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

(d) Gases for the NO_x analyzer shall be single blends of NO named as NO_x with a maximum NO_2 concentration of 5 percent of the nominal value using zero grade nitrogen as the diluent.

(e) Fuel for the HFID (or FID, as applicable) and the methane analyzer shall be a blend of 40±2 percent hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response; 98 to 100 percent hydrogen fuel may be used with advance approval of the Administrator.

(f) *Hydrocarbon analyzer burner air.* The concentration of oxygen must be within 1 mole percent of the oxygen concentration of the burner air used in the latest oxygen interference check ($\%O_2I$). If the difference in oxygen concentration is greater than 1 mole percent, then the oxygen interference must be checked and the analyzer adjusted if necessary, to meet the $\%O_2I$ requirements. The burner air must contain less than 2 ppmC hydrocarbon.

(g) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04

percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(h)(1) "Zero-grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(2) Calibration gases shall be accurate to within ±1 percent of NIST gas standards, or other gas standards which have been approved by the Administrator.

(3) Span gases shall be accurate to within ±2 percent of NIST gas standards, or other gas standards which have been approved by the Administrator.

(i) Oxygen interference check gases shall contain propane at a concentration greater than 50 percent of range. The concentration value shall be determined to calibration gas tolerances by chromatographic analysis of total hydrocarbons plus impurities or by dynamic blending. Nitrogen shall be the predominant diluent with the balance being oxygen. Oxygen concentration in the diluent shall be between 20 and 22 percent.

(j) The use of precision blending devices (gas dividers) to obtain the required calibration gas concentrations is acceptable, provided that the blended gases are accurate to within ±1.5 percent of NIST gas standards, or other gas standards which have been approved by the Administrator. This accuracy implies that primary gases used for blending must be "named" to an accuracy of at least ±1 percent, traceable to NIST or other approved gas standards.

§ 92.113 Fuel specifications.

(a) *Diesel test fuel.* (1) The diesel fuels for testing locomotives or locomotive engines designed to operate on diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 92.5) in Table B113–1 of this section, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B113–1

Item	ASTM	Type 2–D
Cetane Number	D613	40–48
Cetane Index	D976	40–48
Distillation range:		
IBP,		
°F	D86	340–400
(°C)		(171.1–204.4)
10 pct. point,		
°F	D86	400–460
(°C)		(204.4–237.8)
50 pct. point,		
°F	D86	470–540
(°C)		(243.3–282.2)
90 pct. point,		
°F	D86	560–630
(°C)		(293.3–332.2)
EP,		
°F	D86	610–690
(°C)		(321.1–365.6)
Gravity, °API	D287	32–37
Total sulfur, pct	D2622	0.2–0.4
Hydrocarbon composition, pct:		
Aromatics,	D5186	[1] 27
Paraffins, Naphthenes, Olefins	D1319	[2]
Flashpoint, min.,		
°F	D93	130
°C		(54.4)
Viscosity, centistokes	D445	2.0–3.2

[1] Minimum. [2] Remainder.

(2) Other diesel fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in service; and

(iii) Use of a fuel listed under paragraph (a)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraphs (a)(1), and (a)(2) of this section shall be reported in accordance with § 92.133.

(b) *Natural gas test fuel (compressed natural gas, liquefied natural gas).* (1) Natural gas-fuel meeting the specifications (as determined using methods incorporated by reference at § 92.5) in Table B113–2 of this section, or substantially similar specifications approved by the Administrator, shall be used in exhaust emissions testing of locomotives or locomotive engines designed to operate on natural gas-fuel, as follows:

TABLE B113–2

Item	Mole pct.	ASTM test method No.	Value
Methane	Min. ..	D1945	89.0
Ethane	Max.	D1945	4.5
C_3 and higher	Max.	D1945	2.3
C_6 and higher	Max.	D1945	0.2
Oxygen	Max.	D1945	0.6
Inert gases: Sum of CO_2 and N_2—Odorant [1].	Max.	D1945	4.0

[1] The natural gas at ambient conditions must have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over 1/5 (one-fifth) of the lower limit of flammability.

(2) Other natural gas-fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service; and

(iii) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraph (b)(1) or (b)(2) of this section shall be reported in accordance with § 92.133.

(c) *Other fuel types.* (1) For locomotives or locomotive engines which are designed to be capable of using a type of fuel (or mixed fuel) other than diesel fuel, or natural gas fuel (e.g., methanol), and which are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The Administrator shall determine the specifications of the fuel to be used for testing, based on the engine design, the specifications of commercially available fuels, and the recommendation of the manufacturer.

(2) The specification of the fuel to be used under paragraph (c)(1) of this section shall be reported in accordance with § 92.133.

§ 92.114 Exhaust gas and particulate sampling and analytical system.

(a) *General.* (1) During emission testing, the engine exhaust is routed through an exhaust duct connected to, or otherwise adjacent to the outlet of the locomotive exhaust system. Emission samples are collected as specified in paragraphs (b) and (c) of this section. Exhaust duct requirements are specified in paragraph (d) of this section.

(2) The systems described in this section are appropriate for use with locomotives or engines employing a single exhaust.

(i) For testing where the locomotive or engine has multiple exhausts all exhaust streams shall be combined into a single stream prior to sampling, except as allowed by paragraph (a)(2)(ii) of this section.

(ii) For locomotive testing where the locomotive has multiple exhaust stacks, proportional samples may be collected from each exhaust outlet instead of ducting the exhaust stacks together, provided that the CO_2 concentrations in each exhaust stream are shown (either prior to testing or during testing) to be within 5 percent of each other for each test mode.

(3) All vents, including analyzer vents, bypass flow, and pressure relief vents of regulators, should be vented in such a manner to avoid endangering personnel in the immediate area.

(4) Additional components, not specified here, such as instruments, valves, solenoids, pumps, switches, and so forth, may be employed to provide additional information and coordinate the functions of the component systems, provided that their use is consistent with good engineering practice. Any variation from the specifications in this subpart including performance specifications and emission detection methods may be used only with prior approval by the Administrator.

(b) *Raw exhaust sampling for gaseous emissions.* (1)(i) An example of the type of sampling and analytical system which is to be used for gaseous emissions testing under this subpart is shown in Figure B114–1 of this section. All components or parts of components that are wetted by the sample or corrosive calibration gases shall be either chemically cleaned stainless steel or other inert material, for example, polytetrafluoroethylene resin. The use of "gauge savers" or "protectors" with nonreactive diaphragms to reduce dead volumes is permitted. Additional components such as instruments, valves, solenoids, pumps, switches, etc. may be employed to provide additional information and coordinate the functions of the component systems.

(ii) *System components list.* The following is a list of components shown in Figure B114–1 of this section by numeric identifier.

(A) *Filters.* Glass fiber filter paper is permitted for the fine particulate filters (F1, F2, and F3). Optional filter F4 is a coarse filter for large particulates. Filters F3 and F4 are heated filters

(B) *Flowmeters.* Flowmeters FL1 and FL2 indicate sample flow rates through the CO and CO_2 analyzers. Flowmeters FL3, FL4, FL5, and FL6 indicate bypass flow rates.

(C) *Gauges.* Downstream gauges are required for any system used for testing under this subpart. Upstream gauges may be required under this subpart. Upstream gauges G1 and G2 measure the input to the CO and CO_2 analyzers. Downstream gauges G3 and G4 measure the exit pressure of the CO and CO_2 analyzers. If the normal operating range of the downstream gauges is less than 3 inches of water, then the downstream gauges must be capable of reading both pressure and vacuum. Gauges G3 and G4 are not necessary if the analyzers are vented directly to atmospheric pressure.

(D) *Pressure gauges.* P1 is a bypass pressure gauge; P2, P3, P4, and P5 are for sample or span pressure at inlet to flow control valves.

(E) *Water traps.* Water traps WT1 and WT2 to remove water from the sample. A water trap performing the function of WT1 is required for any system used for testing under this subpart. Chemical dryers are not an acceptable method of removing the water. Water removal by condensation is acceptable. If water is removed by condensation, the sample gas temperature or sample dew point must be monitored either within the water trap or downstream; it may not exceed 45 °F (7 °C). Means other than condensation may be used only with prior approval from the Administrator.

(F) *Regulators.* R1, R3, R4, and R6 are line pressure regulators to control span pressure at inlet to flow control valves; R2 and R5 are back pressure regulators to control sample pressure at inlet to flow control valves.

(G) *Valves.* V1, V7, V8, and V14 are selector valves to select zero or calibration gases; V2 are optional heated selector valves to purge the sample probe, perform leak checks, or to

perform hang-up checks; V3 and V5 are selector valves to select sample or span gases; V4, V6, and V15 are flow control valves; V9 and V13—heated selector valve to select sample or span gases; V10 and V12—heated flow control valves; V11—Selector valve to select NO_X or bypass mode in the chemiluminescence analyzer; V16—heated selector valve to perform leak checks.

(H) *Pump.* Sample transfer pump to transport sample to analyzers.

(I) *Temperature sensor.* A temperature sensor (T1) to measure the NO_2 to NO converter temperature is required for any system used for testing under this subpart.

(J) *Dryer.* Dryers D1 and D2 to remove the water from the bypass flows to prevent condensation in flowmeters FL3, FL4, and FL6.

(2) The following requirements must be incorporated in each gaseous sampling system used for testing under this subpart:

(i) The exhaust is analyzed for gaseous emissions using analyzers meeting the specifications of § 92.109, and all analyzers must obtain the sample to be analyzed from the same sample probe, and internally split to the different analyzers.

(ii) Sample transfer lines must be heated as specified in paragraph (b)(4) of this section.

(iii) Carbon monoxide and carbon dioxide measurements must be made on a dry basis. Specific requirements for the means of drying the sample can be found in paragraph (b)(1)(ii)(E) of this section.

(iv) All NDIR analyzers must have a pressure gauge immediately downstream of the analyzer. The gauge tap must be within 2 inches of the analyzer exit port. Gauge specifications can be found in paragraph (b)(1)(ii)(C) of this section.

(v) All bypass and analyzer flows exiting the analysis system must be measured. Capillary flows such as in HFID and CL analyzers are excluded. For each NDIR analyzer with a flow meter located upstream of the analyzer, an upstream pressure gauge must be used. The gauge tap must be within 2 inches of the analyzer entrance port.

(vi) Calibration or span gases for the NO_X measurement system must pass through the NO_2 to NO converter.

(vii) The temperature of the NO_2 to NO converter must be displayed continuously.

(3) *Gaseous sample probe.* (i) The gaseous emissions sample probe shall be a straight, closed end, stainless steel, multi-hole probe. The inside diameter shall not be greater than the inside diameter of the sample line by more than 0.01 inches (0.03 cm). The wall thickness of the probe shall not be greater than 0.04 inches (0.10 cm). The fitting that attaches the probe to the exhaust duct shall be as small as practical in order to minimize heat loss from the probe.

(ii) The gaseous emissions sample probe shall have a minimum of three holes in each 3 inch segment of length of the probe. The spacing of the radial planes for each hole in the probe must be such that they cover approximately equal cross-sectional areas of the exhaust duct. The angular spacing of the holes must be approximately equal. The angular spacing of any two holes in one plane may not be 180°±20° (see section view C–C of Figure B114–2 of this section). The holes should be sized such that each has approximately the same flow. If only three holes are used in each 3 inch segment of probe length, they may not all be in the same radial plane.

(iii) The sample probe shall be so located in the center of the exhaust duct to minimize stratification, with respect to both concentration and velocity, present in the exhaust stream. The probe shall be located between two feet and five feet downstream of the locomotive exhaust outlet (or nearest practical equivalent during engine testing), and at least 1 foot upstream of the outlet of the exhaust duct to the atmosphere.

(iv) If the exhaust duct is circular in cross section, the sample probe should extend approximately radially across the exhaust duct, and approximately through the center of the duct. The sample probe must extend across at least 80 percent of the diameter of the duct.

(v) If the exhaust duct is not circular in cross section, the sample probe should extend across the exhaust duct approximately parallel to the longest sides of the duct, or along the longest axis of the duct which is not a diagonal, and through the approximate center of the duct. The sample probe must extend across at least 80 percent of the longest axis of the duct which is not a diagonal, and be approximately parallel to the longest sides of the duct.

(vi) Other sample probe designs and/or locations may be used only if demonstrated (to the Administrator's satisfaction) to provides a more representative sample.

(4) Sample transfer line(s).

(i) The maximum inside diameter of the gaseous emissions sample line shall not exceed 0.52 inches (1.32 cm).

(ii) If valve V2 is used, the sample probe must connect directly to valve V2. The location of optional valve V2 may not be greater than 4 feet (1.22 m) from the exhaust duct.

(iii) The sample transport system from the engine exhaust duct to the HC analyzer and the NO^X analyzer must be heated as is indicated in Figure B114–1 of this section.

(A) For diesel fueled and biodiesel fueled locomotives and engines, the wall temperature of the HC sample line must be maintained at 375 ± 20 °F (191 ± 11 °C). An exception is made for the first 4 feet (122 cm) of sample line from the exhaust duct. The upper temperature tolerance for this 4 foot section is waived and only the minimum temperature specification applies.

(B) For locomotives and engines using fuels other than diesel or biodiesel, the heated components in the HC sample path shall be maintained at a temperature approved by the Administrator, not exceeding 446 °F (230 °C).

(C) For all fuels, wall temperature of the NO_X sample line must be maintained between 140 °F (60 °C) and 446 °F (230 °C). An exception is made for the first 4 feet (122 cm) of sample line from the exhaust duct. The upper temperature tolerance for this 4 foot section is waived and only the minimum temperature specification applies.

(D) For each component (pump, sample line section, filters, etc.) in the heated portion of the sampling system that has a separate source of power or heating element, use engineering judgment to locate the coolest portion of that component and monitor the temperature at that location. If several components are within an oven, then only the surface temperature of the component with the largest thermal mass and the oven temperature need be measured.

(c) *Particulate emissions.* (1)(i) Schematic drawing. An example of a sampling system which may be used for particulate emissions testing under this subpart is shown in Figure B114–3 of this section. All components or parts of components that are wetted by the samples gases upstream of the filter shall be either chemically cleaned stainless steel or other inert material, for example, polytetrafluoroethylene resin. The use of "gauge savers" or "protectors" with nonreactive diaphragms to reduce dead volumes is permitted. Additional components such as instruments, valves, solenoids, pumps, switches, etc. may be employed to provide additional information and coordinate the functions of the component systems.

(ii) The following requirements must be incorporated in each system used for testing under this subpart:

(A) All particulate filters must obtain the sample from the same sample probe located within the exhaust gas extension with internal split to the different filters.

(B) The wall temperature of the sample transport system from the probe to the dilution tunnel (excluding the first 4 feet of the particulate transfer tube) must be maintained at 375°F to 395°F (191°C to 202°C).

(2) *Particulate raw sample probe.* (i) The sample probe for the raw exhaust shall be a straight, closed end, stainless steel, multi-hole probe of approximately 1.25 inch (3.2 cm) diameter. The inside diameter shall not be greater than the inside diameter of the sample line by more than 0.1 inches (0.3 cm). The wall thickness of the probe shall not be greater than 0.06 inches (0.15 cm). The fitting that attaches the probe to the exhaust duct shall be as small as practical in order to minimize heat loss from the probe.

(ii) All sample collection holes in the probe shall be located so as to face away from the direction of flow of the exhaust stream or at most be tangential to the flow of the exhaust stream past the probe (see Figure B114–4 of this section). Five holes shall be located in each radial plane along the length of the probe in which sample holes are placed. The spacing of the radial planes for each set of holes in the probe must be such that they cover approximately equal cross-sectional areas of the exhaust duct. For rectangular ducts, this means that the sample hole-planes must be equidistant from each other. For circular ducts, this means that the distance between the sample hole-planes must be decreased with increasing distance from the center of the duct (see Figure B114–4 of this section). (Note: Particulate concentrations are expected to vary to some extent as a function of the distance to the duct wall; thus each set of sample holes collects a sample that is representative of a cross-sectional disk at that approximate distance from the wall.) The spacing between sets of sample holes along the length of the probe shall be no more than 4 inches (10 cm). The holes should be sized such that each has approximately the same flow.

(iii)(A) The particulate sample probe shall be located in the exhaust duct on an axis which is directly downstream of, and parallel to the axis of the gaseous sample probe. The distance between the probes shall be between 3 inches (7.6 cm) and 6 inches (15.2 cm). Greater spacing is allowed for engine testing, where spacing of 3 inches (7.6 cm) to 6 inches (15.2 cm) is not practical.

(B) If the exhaust duct is circular in cross section, the sample probe should extend approximately radially across the exhaust duct, and approximately through the center of the duct. The sample probe must extend across at least 80 percent of the diameter of the duct.

(C) If the exhaust duct is not circular in cross section, the sample probe should extend across the exhaust duct approximately parallel to the longest sides of the duct, or along the longest axis of the duct which is not a diagonal, and through the approximate center of the duct. The sample probe must extend across at least 80 percent of the longest axis of the duct which is not a diagonal, and be approximately parallel to the longest sides of the duct.

(3) *Particulate sample transfer line.* (i) The maximum inside diameter of the particulate emissions sample line shall be approximately 2.5 inches (6.4 cm).

(ii) The sample transfer line shall be heated to maintain a wall temperature above 375°F.

(4) *Dilution tunnel.* The flow capacity of the blower moving the mixture of sample and air through the tunnel must be sufficient to maintain the diluted sample stream at a temperature of 125 °F (51.7 °C) or less, at the sampling zone in the dilution tunnel and at the sample filter. A single measurement of diluted exhaust temperature is required. The temperature shall also be maintained as required to prevent condensation at any point in the dilution tunnel. A small negative pressure is to be maintained in the dilution tunnel by throttling at the source of the dilution air, and adjusted as necessary, sufficient to draw sample through the probe and sample transfer line. Direct sampling of the particulate material may take place (Figure B114–3 of this section) at this point.

(i)(A) The dilution tunnel shall be:

(*1*) Small enough in diameter to cause turbulent flow (Reynolds Number greater than 4000) and of sufficient length to cause complete mixing of the exhaust and dilution air;

(*2*) 4 inches (10 cm) minimum inside diameter;

(*3*) Constructed of electrically conductive material which does not react with the exhaust components; and

(*4*) Electrically grounded.

(B) The temperature of the diluted exhaust stream inside of the dilution tunnel shall be sufficient to prevent water condensation.

(C) The engine exhaust shall be directed downstream at the point where it is introduced into the dilution tunnel.

(ii) Dilution air:

(A) Shall be at a temperature of 68 °F (20 °C) or greater.

(B) May be filtered at the dilution air inlet.

(C) May be sampled to determine background particulate levels, which can then be subtracted from the values measured in the exhaust stream.

(D) Shall be sampled to determine the background concentration of CO_2.

(iii) Dilute sample probe and collection system.

(A) The particulate sample probe in the dilution tunnel shall be:

(*1*) Installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., on the tunnel centerline, approximately 10 tunnel diameters downstream of the point where the exhaust enters the dilution tunnel).

(*2*) Sufficiently distant (radially) from other sampling probes so as to be free from the influence of wakes or eddies produced by the other probes.

(*3*) 0.5 in. (1.3 cm) minimum inside diameter.

(*4*) The distance from the sampling tip to the filter holder shall not be more than 40 inches (102 cm).

(*5*) Designed to minimize the deposition of particulate during transfer (i.e., bends should be as gradual as possible, protrusions (due to sensors, etc.) should be smooth and not sudden, etc.).

(B) The gas meters or flow instrumentation shall be located sufficiently distant from the tunnel so that the inlet gas temperature remains constant (±5 °F (±2.8 °C)). Alternately, the temperature of the sample may be monitored at the gas meter, and the measured volume corrected to standard conditions.

(C) Particulate sampling filters.

(*1*) Fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters are required.

(*2*) Particulate filters must have a diameter to maintain the average face velocity of the sample across the filter between 35 and 80 cm/s.

(*3*) The dilute exhaust will be simultaneously sampled by a pair of filters (one primary and one back-up filter) during each phase of the test. The back-up filter shall be located no more than 4 inches (10 cm) downstream of the primary filter. The primary and back-up filters shall not be in contact with each other.

(*4*) The recommended target loading on a primary 70-mm filter (60 mm diameter stain area) is 1.3 milligrams. Equivalent loadings (0.5 mg/1075 mm^2 stain area) shall be used as target loadings when other filter sizes are used.

(D) Diluted CO_2 sample collection system.

(*1*) The concentrations of CO_2 in the dilution air and diluted exhaust are determined by pumping a sample into a sample bag (made of a nonreactive material) or directly to the analyzer, as shown in Figure B114–3 of this section.

(*2*) The sample probe for the diluted exhaust shall be installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., on the tunnel centerline, approximately 10 tunnel diameters downstream of the point where the exhaust enters the dilution tunnel). It shall also be sufficiently distant (radially) from other sampling probes so as to be free from the influence of any wakes or eddies produced by the other probes.

(iv) Other sample flow handling and/or measurement systems may be used if shown to yield equivalent results and if approved in advance by the Administrator. (See Appendix IV of this part for guidance.)

(d) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) For locomotive testing, the engine exhaust shall be routed through an exhaust duct with dimensions equal to or slightly larger than the dimensions of the locomotive exhaust outlet. The exhaust duct shall be designed so as to not significantly affect exhaust backpressure.

(2) For engine testing, either a locomotive-type or a facility-type exhaust system (or a combination system) may be used. The exhaust backpressure for engine testing shall be set between 90 and 100 percent of the maximum backpressure that will result with the exhaust systems of the locomotives in which the engine will be used. The facility-type exhaust system shall meet the following requirements:

(i) It must be composed of smooth ducting made of typical in-use steel or stainless steel.

(ii) If an aftertreatment system is employed, the distance from the exhaust manifold flange(s), or turbocharger outlet to any exhaust aftertreatment device shall be the same as in the locomotive configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(iii) If the exhaust system ducting from the exit of the engine exhaust manifold or turbocharger outlet to smoke meter exceeds 12 feet (3.7 m) in length, then all ducting shall be insulated consistent with good engineering practice.

(iv) For engines designed for more than one exhaust outlet to the atmosphere, a specially fabricated collection duct may be used. The collection duct should be located downstream of the in-locomotive exits to the atmosphere. Any potential increase in backpressure due to the use of a single exhaust instead of multiple exhausts may be compensated for by using larger than standard exhaust system components in the construction of the collection duct.

(e) *Dilute exhaust sampling for gaseous and particulate emissions.* (1) Dilution of the exhaust prior to sampling is allowed for gaseous emissions. The equipment and methods used for dilution, sampling and analysis shall comply with the requirements of subpart N of part 86 of this chapter, with the following exceptions and additional requirements:

(i) Proportional sampling and heat exchangers are not required;

(ii) Larger minimum dimensions for the dilution tunnel(s) shall be specified by the Administrator;

(iii) Other modifications may be made with written approval from the Administrator.

(2) Dilution of only a portion of the exhaust is allowed, provided that:

(i) The fraction of the total exhaust that is diluted is determined for systems that determine mass emission rates (g/hr) from the total volume of the diluted sample; or

(ii) The ratio of raw sample volume to diluted sample volume is determined for systems that determine mass emission rates (g/hr) from measured fuel flow rates.

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Figures to § 92.114

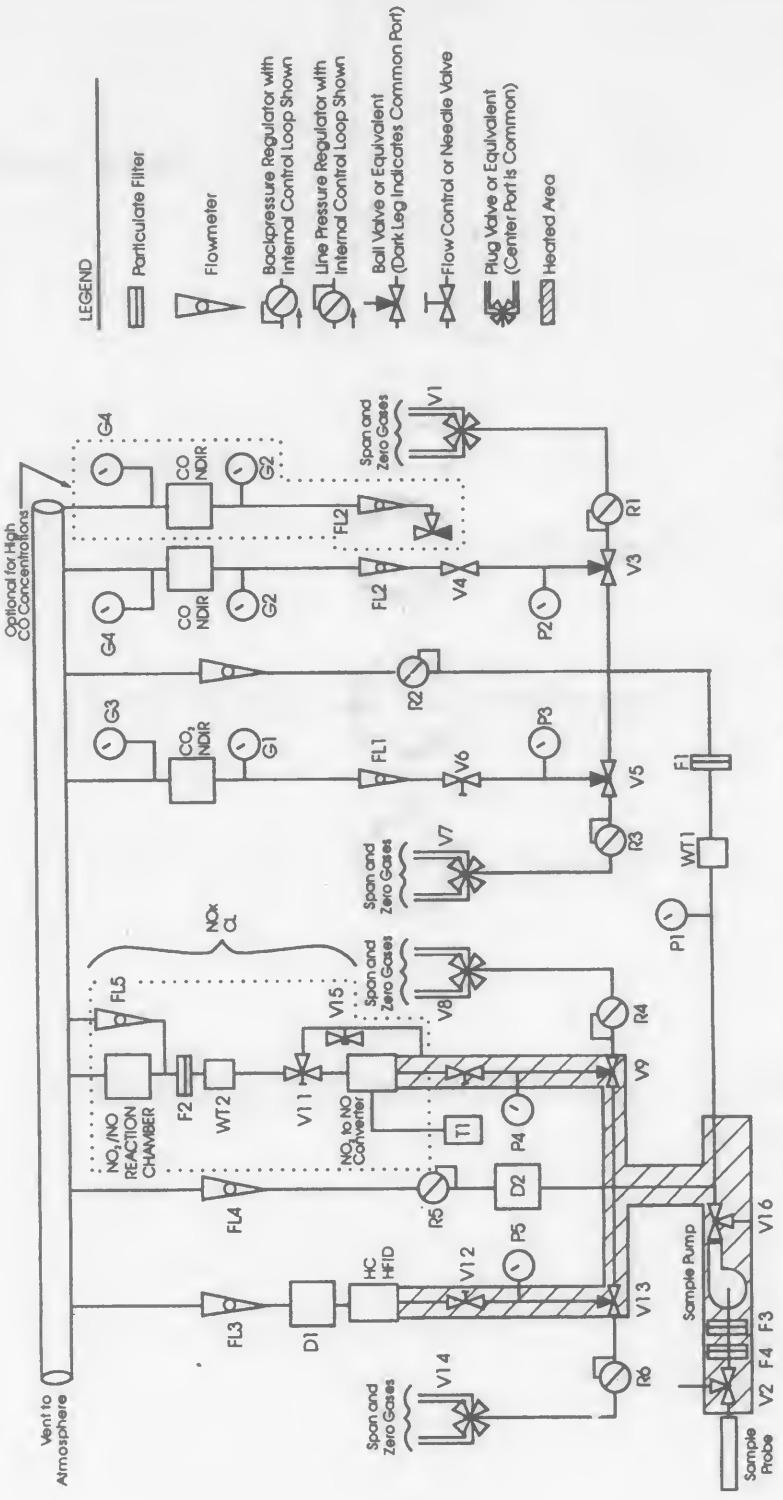

Figure B114-1. – Exhaust Gas Sampling and Analytical Train

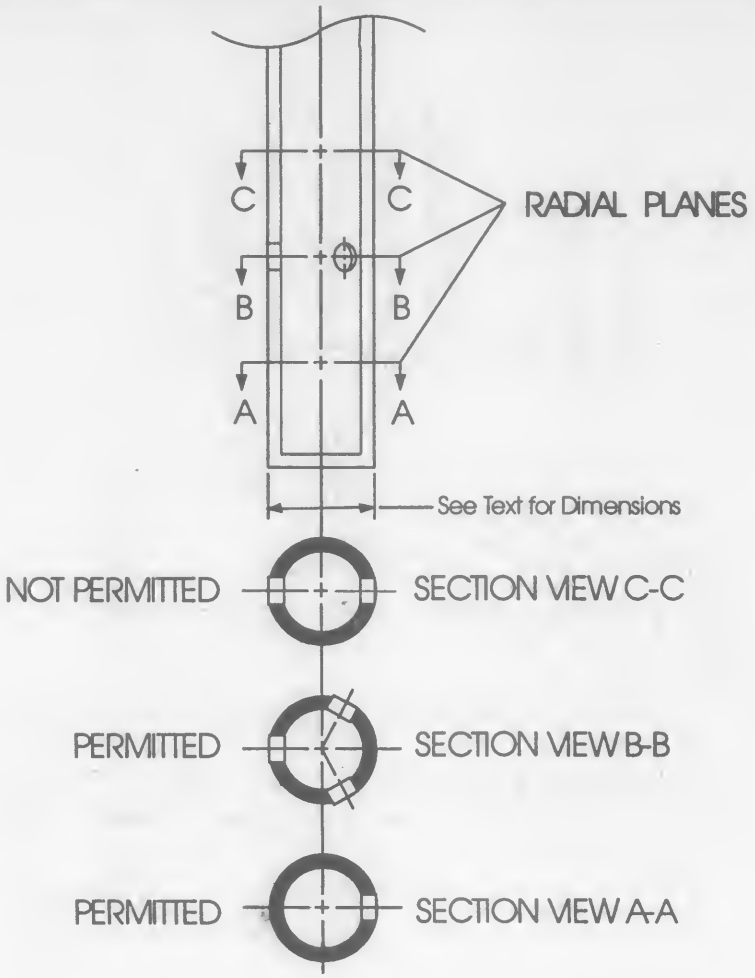

Figure B114-2 SAMPLE PROBE AND TYPICAL HOLE SPACING

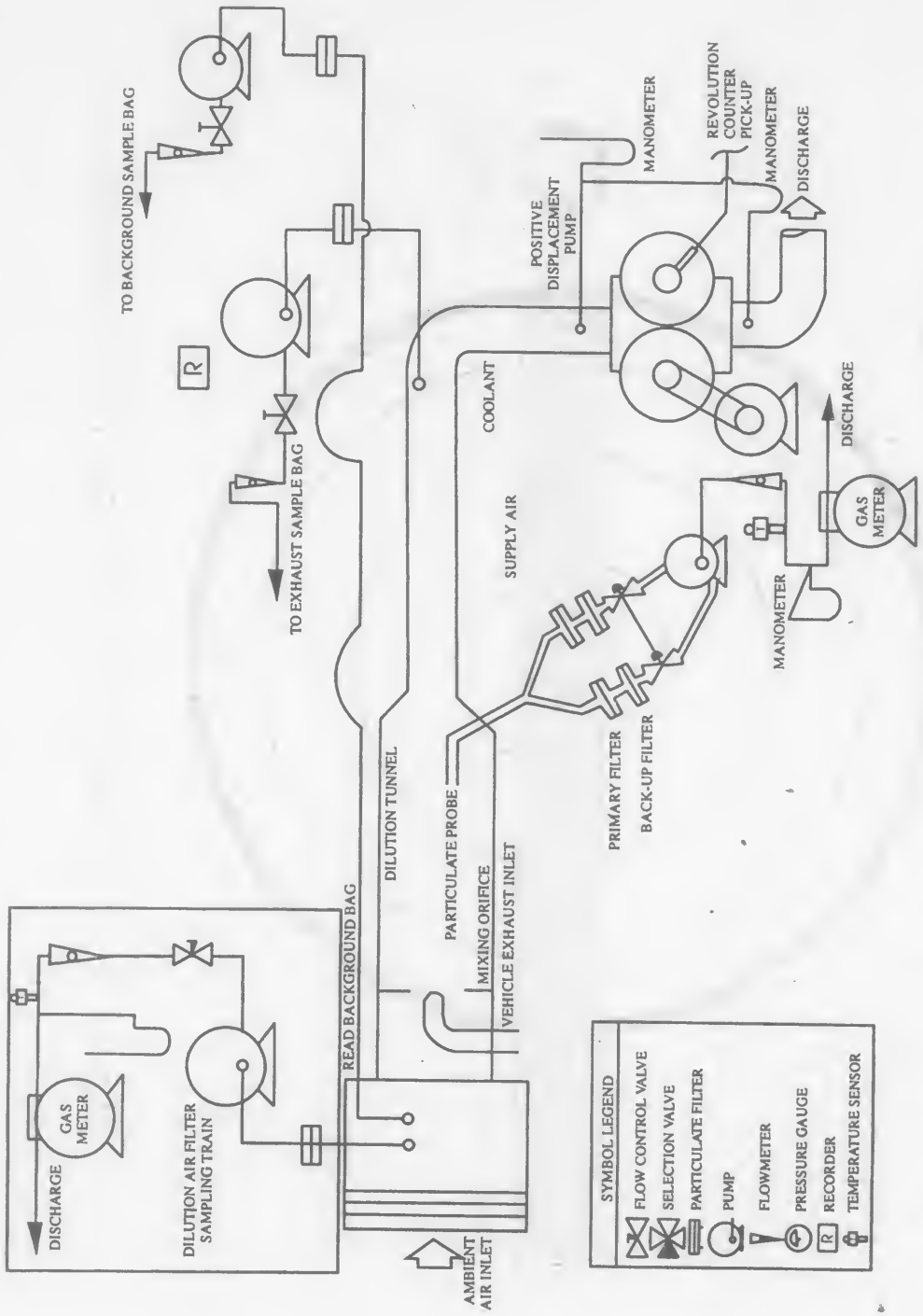

Figure B114-3 PARTICULATE EMISSIONS SAMPLING SYSTEM

Figure B114-4 Particulate Sample Probe Design

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§ 92.115 Calibrations; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 92.116 through 92.122.

(b) At least monthly or after any maintenance which could alter calibration, perform the periodic calibrations required by § 92.118(a)(2) (certain analyzers may require more frequent calibration depending on the equipment and use). Exception: the water rejection ratio and the CO_2 rejection ratio on all NDIR analyzers is only required to be performed quarterly.

(c) At least monthly or after any maintenance which could alter calibration, calibrate the engine dynamometer flywheel torque and speed measurement transducers, as specified in § 92.116.

(d) At least monthly or after any maintenance which could alter calibration, check the oxides of nitrogen converter efficiency, as specified in § 92.121.

(e) At least weekly or after any maintenance which could alter calibration, check the dynamometer (if used) shaft torque feedback signal at steady-state conditions by comparing:

(1) Shaft torque feedback to dynamometer beam load; or

(2) By comparing in-line torque to armature current; or

(3) By checking the in-line torque meter with a dead weight per § 92.116(b)(1).

(f) At least quarterly or after any maintenance which could alter calibration, calibrate the fuel flow measurement system as specified in § 92.107.

(g) At least annually or after any maintenance which could alter calibration, calibrate the electrical output measurement system for the electrical load bank used for locomotive testing.

(h) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

(i) For equipment not addressed in §§ 92.116 through 92.122 calibrations shall be performed at least as often as required by the equipment manufacturer or as necessary according to good practices. The calibrations shall be performed in accordance with procedures specified by the equipment manufacturer.

(j) Where testing is conducted intermittently, calibrations are not required during period in which no testing is conducted, provided that times between the most recent calibrations and the date of any test does not exceed the calibration period. For example, if it has been more than one month since the analyzers have been calibrated (as specified in paragraph (c) of this section) then they must be calibrated prior to the start of testing.

§ 92.116 Engine output measurement system calibrations.

(a) *General requirements for dynamometer calibration.* (1) The engine flywheel torque and engine speed measurement transducers shall be calibrated with the calibration equipment described in this section.

(2) The engine flywheel torque feedback signals to the cycle verification equipment shall be electronically checked before each test, and adjusted as necessary.

(3) Other engine dynamometer system calibrations shall be performed as dictated by good engineering practice.

(4) When calibrating the engine flywheel torque transducer, any lever arm used to convert a weight or a force through a distance into a torque shall be used in a horizontal position (±5 degrees).

(5) Calibrated resistors may not be used for engine flywheel torque transducer calibration, but may be used to span the transducer prior to engine testing.

(b) *Dynamometer calibration equipment*—(1) *Torque calibration equipment.* Two techniques are allowed for torque calibration. Alternate techniques may be used if shown to yield equivalent accuracies. The NIST "true" value torque is defined as the torque calculated by taking the product of an NIST traceable weight or force and a sufficiently accurate horizontal lever arm distance, corrected for the hanging torque of the lever arm.

(i) The lever-arm dead-weight technique involves the placement of known weights at a known horizontal distance from the center of rotation of the torque measuring device. The equipment required is:

(A) *Calibration weights.* A minimum of six calibration weights for each range of torque measuring device used are required. The weights must be approximately equally spaced and each must be traceable to NIST weights within 0.1 percent. Laboratories located in foreign countries may certify calibration weights to local government bureau standards. Certification of weight by state government Bureau of Weights and Measures is acceptable. Effects of changes in gravitational constant at the test site may be accounted for if desired.

(B) *Lever arm.* A lever arm with a minimum length of 24 inches is required. The horizontal distance from the centerline of the engine torque measurement device to the point of weight application shall be accurate to within ±0.10 inches. The arm must be balanced, or the hanging torque of the arm must be known to within ±0.1 ft-lbs.

(ii) The transfer technique involves the calibration of a master load cell (i.e., dynamometer case load cell). This calibration can be done with known calibration weights at known horizontal distances, or by using a hydraulically actuated precalibrated master load cell. This calibration is then transferred to the flywheel torque measuring device. The technique involves the following steps:

(A) A master load cell shall be either precalibrated or be calibrated per paragraph (b)(1)(i)(A) of this section with known weights traceable to NIST within 0.1 percent, and used with the lever arm(s) specified in this section. The dynamometer should be either running or vibrated during this calibration to minimize static hysteresis.

(B) Transfer of calibration from the case or master load cell to the flywheel torque measuring device shall be performed with the dynamometer operating at a constant speed. The flywheel torque measurement device readout shall be calibrated to the master load cell torque readout at a minimum of six loads approximately equally spaced across the full useful ranges of both measurement devices. (Note that good engineering practice requires that both devices have approximately equal useful ranges of torque measurement.) The transfer calibration shall be performed in a manner such that the accuracy requirements of § 92.106(b)(1)(ii) for the flywheel torque measurement device readout be met or exceeded.

(iii) Other techniques may be used if shown to yield equivalent accuracy.

(2) *Speed calibration equipment.* A 60 (or greater) tooth wheel in combination with a common mode rejection frequency counter is considered an absolute standard for engine or dynamometer speed.

(c) *Dynamometer calibration.* (1) If necessary, follow the manufacturer's instructions for initial start-up and basic operating adjustments.

(2) Check the dynamometer torque measurement for each range used by the following:

(i) Warm up the dynamometer following the equipment manufacturer's specifications.

(ii) Determine the dynamometer calibration moment arm. Equipment manufacturer's data, actual measurement, or the value recorded from the previous calibration used for this subpart may be used.

(iii) Calculate the indicated torque (IT) for each calibration weight to be used by:

IT=calibration weight (lb)×calibration moment arm (ft)

(iv) Attach each calibration weight specified in paragraph (b)(1)(i)(A) of this section to the moment arm at the calibration distance determined in paragraph (b)(2)(ii)(B) of this section. Record the power measurement equipment response (ft-lb) to each weight.

(v) For each calibration weight, compare the torque value measured in paragraph (b)(2)(iv) of this section to the calculated torque determined in paragraph (b)(2)(iii) of this section.

(vi) The measured torque must be within 2 percent of the calculated torque.

(vii) If the measured torque is not within 2 percent of the calculated torque, adjust or repair the system. Repeat the steps in paragraphs (b)(2)(i) through (b)(2)(vi) of this section with the adjusted or repaired system.

(3) *Option.* A master load-cell or transfer standard may be used to verify the in-use torque measurement system.

(i) The master load-cell and read out system must be calibrated with weights at each test weight specified in paragraph (b)(1)(i)(A) of this section. The calibration weights must be traceable to within 0.1 percent of NIST weights.

(ii) Warm up the dynamometer following the equipment manufacturer's specifications.

(iii) Attach the master load-cell and loading system.

(iv) Load the dynamometer to a minimum of 6 equally spaced torque values as indicated by the master load-cell for each in-use range used.

(v) The in-use torque measurement must be within 2 percent of the torque measured by the master system for each load used.

(vi) If the in-use torque is not within 2 percent of the master torque, adjust or repair the system. Repeat steps in paragraphs (b)(3)(ii) through (b)(3)(vi) of this section with the adjusted or repaired system.

(4) The dynamometer calibration must be completed within 2 hours from the completion of the dynamometer warm-up.

(d) *Electrical load banks.* Equipment used to measure the electrical power output dissipated by electrical load banks shall be calibrated as frequently as required by § 92.115, using a calibration procedure that is consistent with good engineering practice and approved by the Administrator.

§ 92.117 Gas meter or flow instrumentation calibration, particulate measurement.

(a) Sampling for particulate emissions requires the use of gas meters or flow instrumentation to determine flow through the particulate filters. These instruments shall receive initial and monthly calibrations as follows:

(1)(i) Install a calibration device in series with the instrument. A critical flow orifice, a bellmouth nozzle, or a laminar flow element or an NIST traceable flow calibration device is required as the standard device.

(ii) The flow system should be checked for leaks between the calibration and sampling meters, including any pumps that may be part of the system, using good engineering practice.

(2) Flow air through the calibration system at the sample flow rate used for particulate testing and at the backpressure which occurs during the sample test.

(3) When the temperature and pressure in the system have stabilized, measure the indicated gas volume over a time period of at least five minutes or until a gas volume of at least ±1 percent accuracy can be determined by the standard device. Record the stabilized air temperature and pressure upstream of the instrument and as required for the standard device.

(4) Calculate air flow at standard conditions as measured by both the standard device and the instrument(s).

(5) Repeat the procedures of paragraphs (a)(2) through (4) of this section using at least two flow rates which bracket the typical operating range.

(6) If the air flow at standard conditions measured by the instrument differs by ±1.0 percent of the maximum operating range or ±2.0 percent of the point (whichever is smaller), then a correction shall be made by either of the following two methods:

(i) Mechanically adjust the instrument so that it agrees with the calibration measurement at the specified flow rates using the criteria of paragraph (a)(6) of this section; or

(ii) Develop a continuous best fit calibration curve for the instrument (as a function of the calibration device flow measurement) from the calibration points to determine corrected flow. The points on the calibration curve relative to the calibration device measurements must be within ±1.0 percent of the maximum operating range of ±2.0 percent of the point through the filter.

(b) *Other systems.* A bell prover may be used to calibrate the instrument if the procedure outlined in ANSI B109.1–1992 (incorporated by reference at § 92.5) is used. Prior approval by the Administrator is not required to use the bell prover.

§ 92.118 Analyzer checks and calibrations.

(a)(1) Prior to initial use and after major repairs, bench check each analyzer for compliance with the specifications of § 92.109.

(2) The periodic calibrations are required:

(i) Leak check of the pressure side of the system (see paragraph (b) of this section). If the option described in paragraph (b)(2) of this section is used, a pressure leak check is not required.

(ii) Calibration of all analyzers (see §§ 92.119 through 92.122).

(iii) Check of the analysis system response time (see paragraph (c) of this section). If the option described in paragraph (c)(2) of this section is used, a response time check is not required.

(b) *Leak checks*—(1) *Vacuum side leak check.* (i) Any location within the analysis system where a vacuum leak could affect the test results must be checked.

(ii) The maximum allowable leakage rate on the vacuum side is 0.5 percent of the in-use flow rate for the portion of the system being checked. the analyzer flows and bypass flows may be used to estimate the in-use flow rates.

(iii) The sample probe and the connection between the sample probe and valve V2 may be excluded from the leak check.

(2) *Pressure side leak check.* (i) The maximum allowable leakage rate on the pressure side in 5 percent of the in-use flow rate.

(ii) Option: If the flow rate for each flow meter is equal to or greater than the flow rate recorded in paragraph (c)(2)(i) of this section, then a pressure side leak check is not required.

(c) *System response time; check procedure.* (1) After any major change in the system, check the system response time by the following procedure:

(i) Stabilize the operating temperature of the sample line, sample pump, and heated filters.

(ii) Introduce an HC span gas into the sampling system at the sample probe or valve V2 at atmospheric pressure. Simultaneously, start the time measurement.

(iii) When the HC instrument response is 95 percent of the span gas

concentration used, stop the time measurement.

(iv) If the elapsed time is more than 20.0 seconds, make necessary adjustments.

(v) Repeat with the CO, CO_2, and NO_x instruments and span gases.

(2) *Option.* If the following parameters are determined, the initial system response time may be generally applied to future checks:

(i) *Analyzer and bypass flow rates.* (A) Determine by experimentation the minimum analyzer and bypass flow rates individually and in combination that will produce a response time as close as possible to 20.0 seconds per paragraph (c)(1) of this section.

(B) Record the highest minimum flow rate for each flow meter as determined in paragraph (c)(2)(i)(A) of this section.

(ii) *Capillary flow analyzers.* This procedure is applicable only to analyzers that have sample capillaries such as the HFID and CL analyzers. It is also assumed that the system has sample/span valves that perform the function of valves V9 and V13 in.

(A) Operate the analyzer(s) at the in-use capillary pressure.

(B) Adjust the bypass flow rate to the flow rate recorded in paragraph (c)(2)(i)(B) of this section.

(C) Measure and record the response time from the sample/span valve(s) per paragraph (c)(1) of this section.

(D) The response time required by paragraph (c)(2)(ii)(C) of this section can be determined by switching from the "sample" position to the "span" position of the sample/span valve and observing the analyzer response on a chart recorder. Normally, the "sample" position would select a "room air" sample and the "span" position would select a span gas.

(E) Adjust the bypass flow rate to the normal in-use value.

(F) Measure and record the response time from the sample/span valve(s) per paragraph (c)(1) of this section.

(G) Determine the slowest response time (step in paragraph (c)(2)(ii)(C) of this section or step in paragraph (c)(2)(ii)(D) of this section) and add 2 seconds to it.

§ 92.119 Hydrocarbon analyzer calibration.

The HFID hydrocarbon analyzer shall receive the following initial and periodic calibration:

(a) *Initial and periodic optimization of detector response.* Prior to introduction into service and at least annually thereafter, the HFID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

(1) Follow good engineering practices for initial instrument start-up and basic operating adjustment using the appropriate fuel (see § 92.112) and zero-grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer a propane-in-air mixture with a propane concentration equal to approximately 90 percent of the most common operating range.

(3) HFID optimization is performed:

(i) According to the procedures outlined in Society of Automotive Engineers (SAE) paper No. 770141, "Optimization of Flame Ionization Detector for Determination of Hydrocarbons in Diluted Automobile Exhaust", author, Glenn D. Reschke (incorporated by reference at § 92.5); or

(ii) According to the following procedures:

(A) If necessary, follow manufacturer's instructions for instrument start-up and basic operating adjustments.

(B) Set the oven temperature 5 °C hotter than the required sample-line temperature. Allow at least one-half hour after the oven has reached temperature for the system to equilibrate.

(C) *Initial fuel flow adjustment.* With the fuel and air-flow rates set at the manufacturer's recommendations, introduce a 350 ppmC ±75 ppmC span gas to the detector. Determine the response at a given fuel flow from the difference between the span-gas response and the zero-gas response. Incrementally adjust the fuel flow above and below the manufacturer's specification. Record the span and zero response at these fuel flows. A plot of the difference between the span and zero response versus fuel flow will be similar to the one shown in Figure B119–1 of this section. Adjust the fuel-flow rate to the rich side of the curve, as shown. This is initial flow-rate setting and may not be the final optimized flow rate.

(D) *Oxygen interference optimization.* Choose a range where the oxygen interference check gases (see § 92.112) will fall in the upper 50 percent. Conduct this test with the oven temperature set as required. Oxygen interference check gas specifications are found in § 92.112.

(*1*) Zero the analyzer.

(*2*) Span the analyzer with the 21-percent oxygen blend.

(*3*) Recheck zero response. If it has changed more than 0.5 percent of full scale repeat paragraphs (a)(3)(ii)(D) (*1*) and (*2*) of this section.

(*4*) Introduce the 5 percent and 10 percent oxygen interference check gases.

(*5*) Recheck the zero response. If it has changed more ±1 percent of full scale, repeat the test.

(*6*) Calculate the percent of oxygen interference ($\%O_2I$) for each mixture in step in paragraph (a)(3)(ii)(D)(*4*) of this section.

$$\text{Percent } O_2I = ((B - \text{Analyzer response (ppmC)})/B) \times (100)$$

$$\text{Analyzer response} = ((A)/(\text{Percent of full-scale analyzer response due to A})) \times (\text{Percent of full-scale analyzer response due to B})$$

Where:

A=hydrocarbon concentration (ppmC) of the span gas used in step in paragraph (a)(3)(ii)(D)(*2*) of this section.

B=hydrocarbon concentration (ppmC) of the oxygen interference check gases used in step in paragraph (a)(3)(ii)(D)(*4*) of this section.

(*7*) The percent of oxygen interference ($\%O_2I$) must be less than ±3.0 percent for all required oxygen interference check gases prior to testing.

(*8*) If the oxygen interference is greater than the specifications, incrementally adjust the air flow above and below the manufacturer's specifications, repeating paragraphs (a)(3)(ii)(D) (*1*) through (*7*) of this section for each flow.

(*9*) If the oxygen interference is greater than the specification after adjusting the air flow, vary the fuel flow and thereafter the sample flow, repeating paragraphs (a)(3)(ii)(D) (*1*) through (*7*) of this section for each new setting.

(*10*) If the oxygen interference is still greater than the specifications, repair or replace the analyzer, FID fuel, or burner air prior to testing. Repeat this section with the repaired or replaced equipment or gases.

(E) *Linearity check.* For each range used, check linearity as follows:

(*1*) With the fuel flow, air flow and sample flow adjust to meet the oxygen interference specification, zero the analyzer.

(*2*) Span the analyzer using a calibration gas that will provide a response of approximately 90 percent of full-scale concentration.

(*3*) Recheck the zero response. If it has changed more than 0.5 percent of full scale, repeat steps in paragraphs (a)(3)(ii)(E) (*1*) and (*2*) of this seciton.

(*4*) Record the response of calibration gases having nominal concentrations of 30, 60, and 90 percent of full-scale concentration. It is permitted to use additional concentrations.

(*5*) Perform a linear least square regression on the data generated. Use an equation of the form y = mx, where x is the actual chart deflection and y is the concentration.

(*6*) Use the equation z = y/m to find the linear chart deflection (z) for each calibration gas concentration (y).

(*7*) Determine the linearity (%L) for each calibration gas by:

Percent L=(100)(z − x)/(Full-scale linear chart deflection)

(*8*) The linearity criterion is met if the %L is less than ±2 percent for each data point generated. Below 40 ppmC the linearity criterion may be expanded to ±4 percent. For each emission test, a calibration curve of the form y = mx is to be used. The slope (m) is defined for each range by the spanning process.

(*9*) If the %L for any point exceeds the specifications in step in paragraph (a)(3)(ii)(E)(*8*) of this section, the air fuel, and sample-flow rates may be varied within the boundaries of the oxygen interference specifications.

(*10*) If the %L for any data point still exceeds the specifications, repair or replace the analyzer, FID fuel, burner air, or calibration bottles prior to testing. Repeat the procedures of this section with the repaired or replaced equipment or gases.

(F) *Optimized flow rates.* The fuel-flow rate, air-flow rate and sample-flow rate and sample-flow rate are defined as "optimized" at this point.

(iii) Alternative procedures may be used if approved in advance by the Administrator.

(4) After the optimum flow rates have been determined they are recorded for future reference.

(b) *Initial and periodic calibration.* Prior to introduction into service and monthly thereafter, the HFID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate and pressures as when analyzing samples. Calibration gases shall be introduced directly at the analyzer.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each used operating range with propane-in-air calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

BILLING CODE 6560–50–P

Figure to § 92.119

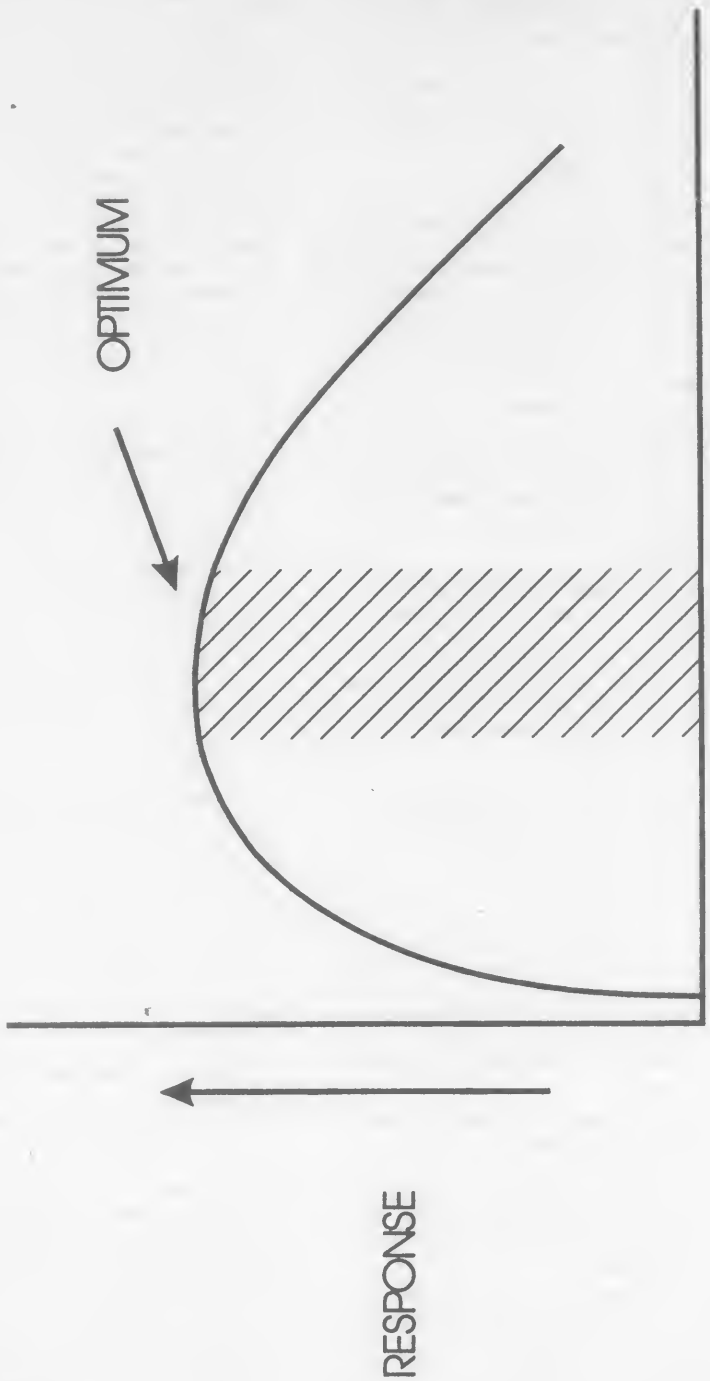

Figure B119-1 RESPONSE VS. FUEL FLOW

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§ 92.120 NDIR analyzer calibration and checks.

(a) *NDIR water rejection ratio check.* (1) Zero and span the analyzer on the lowest range that will be used.

(2) Introduce a saturated mixture of water and zero gas at room temperature directly to the analyzer.

(3) Determine and record the analyzer operating pressure (GP) in absolute units in Pascal. Gauges G3 and G4 may be used if the values are converted to the correct units.

(4) Determine and record the temperature of the zero-gas mixture.

(5) Record the analyzers' response (AR) in ppm to the saturated zero-gas mixture.

(6) For the temperature recorded in paragraph (a)(4) of this section, determine the saturation vapor pressure.

(7) Calculate the water concentration (Z) in the mixture from:

$$Z=(PWB/GP)(10^6)$$

(8) Calculate the water rejection ratio (WRR) from:

$$WRR=(Z/AR)$$

(b) *NDIR CO_2 rejection ratio check.* (1) Zero and span the analyzer on the lowest range that will be used.

(2) Introduce a CO_2 calibration gas of at least 10 percent CO_2 or greater to the analyzer.

(3) Record the CO_2 calibration gas concentration in ppm.

(4) Record the analyzers' response (AR) in ppm to the CO_2 calibration gas.

(5) Calculate the CO_2 rejection ratio (CO_2RR) from:

$$CO_2RR=(\text{ppm } CO_2)/AR$$

(c) *NDIR analyzer calibration.* (1) Detector optimization. If necessary, follow the manufacturer's instructions for initial start-up and basic operating adjustments.

(2) Calibration curve. Develop a calibration curve for each range used as follows:

(i) Zero the analyzer.

(ii) Span the analyzer to give a response of approximately 90 percent of full-scale chart deflection.

(iii) Recheck the zero response. If it has changed more than 0.5 percent of full scale, repeat steps in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(iv) Record the response of calibration gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of full-scale concentration.

(v) Generate a calibration curve. The calibration curve shall be of fourth order or less, have five or fewer coefficients, and be of the form of equation (1) or (2). Include zero as a data point. Compensation for known impurities in the zero gas can be made to the zero-data point. The calibration curve must fit the data points within 2 percent of point or 1 percent of full scale, whichever is less. Equations (1) and (2) follow:

$$y = Ax^4 + Bx^3 + Cx^2 + Dx + E \quad (1)$$

$$y = x/(Ax^4 + Bx^3 + Cx^2 + Dx + E) \quad (2)$$

where:

y = concentration.
x = chart deflection.

(vi) Option. A new calibration curve need not be generated if:

(A) A calibration curve conforming to paragraph (c)(2)(v) of this section exists;

(B) The responses generated in paragraph (c)(2)(iv) of this section are within 1 percent of full scale or 2 percent of point, whichever is less, of the responses predicted by the calibration curve for the gases used in paragraph (c)(2)(iv) of this section.

(vii) If multiple range analyzers are used, only the lowest range must meet the curve fit requirements below 15 percent of full scale.

(3) If any range is within 2 percent of being linear a linear calibration may be used. To determine if this criterion is met:

(i) Perform a linear least-square regression on the data generated. Use an equation of the form y=mx, where x is the actual chart deflection and y is the concentration.

(ii) Use the equation z=y/m to find the linear chart deflection (z) for each calibration gas concentration (y).

(iii) Determine the linearity (%L) for each calibration gas by:

$$\text{Percent } L=(100)(z-x)/(\text{Full-scale chart deflection})$$

(iv) The linearity criterion is met if the %L is less than ±2 percent for each data point generated. For each emission test, a calibration curve of the form y=mx is to be used. The slope (m) is defined for each range by the spanning process.

§ 92.121 Oxides of nitrogen analyzer calibration and check.

(a) *Quench checks; NO_X analyzer.* (1) Perform the reaction chamber quench check for each model of high vacuum reaction chamber analyzer prior to initial use.

(2) Perform the reaction chamber quench check for each new analyzer that has an ambient pressure or "soft vacuum" reaction chamber prior to initial use. Additionally, perform this check prior to reusing an analyzer of this type any time any repairs could potentially alter any flow rate into the reaction chamber. This includes, but is not limited to, sample capillary, ozone capillary, and if used, dilution capillary.

(3) Quench check as follows:

(i) Calibrate the NO_X analyzer on the lowest range that will be used for testing.

(ii) Introduce a mixture of CO_2 calibration gas and NO_X calibration gas to the CL analyzer. Dynamic blending may be used to provide this mixture. Dynamic blending may be accomplished by analyzing the CO_2 in the mixture. The change in the CO_2 value due to blending may then be used to determine the true concentration of the NO_X in the mixture. The CO_2 concentration of the mixture shall be approximately equal to the highest concentration experienced during testing. Record the response.

(iii) Recheck the calibration. If it has changed more than ±1 percent of full scale, recalibrate and repeat the quench check.

(iv) Prior to testing, the difference between the calculated NO_X response and the response of NO_X in the presence of CO_2 (step in paragraph (a)(3)(ii) of this section must not be greater than 3.0 percent of full-scale. The calculated NO_X response is based on the calibration performed in step in paragraph (a)(3)(i) of this section.

(b) *Oxides of nitrogen analyzer calibration.* (1) Every 30 days, perform a converter-efficiency check (see paragraph (b)(2) of this section) and a linearity check (see paragraph (b)(3) of this section).

(2) Converter-efficiency check. The apparatus described and illustrated in Figure B121–1 of this section is to be used to determine the conversion efficiency of devices that convert NO_2 to NO. The following procedure is to be used in determining the values to be used in the equation below:

(i) Follow the manufacturer's instructions for instrument startup and operation.

(ii) Zero the oxides of nitrogen analyzer.

(iii) Connect the outlet of the NO_X generator to the sample inlet of the oxides of nitrogen analyzer which has been set to the most common operating range.

(iv) Introduce into the NO_X generator-analyzer system a span gas with a NO concentration equal to approximately 80 percent of the most common operating range. The NO_2 content of the gas mixture shall be less than 5 percent of the NO_X concentration.

(v) With the oxides of nitrogen analyzer in the NO Mode, record the concentration of NO indicated by the analyzer.

(vi) Turn on the NO_X generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in step in paragraph (b)(2)(v)

of this section. Record the concentration of NO in this NO + O_2 mixture.

(vii) Switch the NO_X generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in step in paragraph (b)(2)(v) of this section. There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

(viii) Switch the oxides of nitrogen analyzer to the NO_X mode and measure total NO_X. Record this value.

(ix) Switch off the NO_X generation, but maintain gas flow through the system. The oxides of nitrogen analyzer will indicate the total NO_X in the NO + O_2 mixture. Record this value.

(x) Turn off the NO_X generator O_2 (or air) supply. The analyzer will now indicate the total NO_X in the original NO in N_2 mixture. This value should be no more than 5 percent above the value indicated in step in paragraph (b)(2)(iv) of this section.

(xi) Calculate the efficiency of the NO_X converter by substituting the concentrations obtained into the following equation:

(A) Percent Efficiency=(1+(a−b)/(c−d))(100)

where:

a=concentration obtained in paragraph (b)(2)(viii) of this section.
b=concentration obtained in paragraph (b)(2)(ix) of this section.
c=concentration obtained in paragraph (b)(2)(vi) of this section.
d=concentration obtained in paragraph (b)(2)(vii) of this section.

(B) The efficiency of the converter shall be greater than 90 percent. Adjustment of the converter temperature may be necessary to maximize the efficiency. If the converter does not meet the conversion-efficiency specifications, repair or replace the unit prior to testing. Repeat the procedures of this section with the repaired or new converter.

(3) Linearity check. For each range used, check linearity as follows:

(i) With the operating parameters adjusted to meet the converter efficiency check and the quench checks, zero the analyzer.

(ii) Span the analyzer using a calibration gas that will give a response of approximately 90 percent of full-scale concentration.

(iii) Recheck the zero response. If it has changed more than 0.5 percent of full scale, repeat steps in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(iv) Record the response of calibration gases having nominal concentrations of 30, 60 and 90 percent of full-scale concentration. It is permitted to use additional concentrations.

(v) Perform a linear least-square regression on the data generated. Use an equation of the form y=mx where x is the actual chart deflection and y is the concentration.

(vi) Use the equation z=y/m to find the linear chart deflection (z) for each calibration gas concentration (y).

(vii) Determine the linearity (%L) for each calibration gas by:

Percent L=(100)(z−x)/(Full-scale chart deflection)

(viii) The linearity criterion is met if the %L is less than ±2 percent of each data point generated. For each emission test, a calibration curve of the form y=mx is to be used. The slope (m) is defined for each range by the spanning process.

(ix) If the %L exceeds ±2 percent for any data point generated, repair or replace the analyzer or calibration bottles prior to testing. Repeat the procedures of this section with the repaired or replaced equipment or gases.

(x) Perform a converter-efficiency check (see paragraph (b)(2) of this section).

(xi) The operating parameters are defined as "optimized" at this point.

(4) Converter-checking gas. If the converter quick-check procedure is to be employed, paragraph (b)(5) of this section, a converter checking gas bottle must be named. The following naming procedure must occur after each converter efficiency check, paragraph (b)(2) of this section.

(i) A gas bottle with an NO_2 concentration equal to approximately 80 percent of the most common operation range shall be designated as the converter checking gas bottle. Its NO concentration shall be less than 25 percent of its NO_2 concentration, on a volume basis.

(ii) On the most common operating range, zero and span the analyzer in the NO_X mode. Use a calibration gas with a concentration equal to approximately 80 percent of the range for spanning.

(iii) Introduce the converter checking gas. Analyze and record concentrations in both the NO_X mode (X) and NO mode (Y).

(iv) Calculate the concentration of the converter checking gas using the results from step in paragraph (b)(4)(iii) of this section and the converter efficiency from paragraph (b)(2) of this section as follows:

Concentration=(((X−Y)(100))/Efficiency)+Y

(5) Converter quick-check.

(i) Span the analyzer in the normal manner (NO_X mode) for the most common operating range.

(ii) Analyze the converter checking gas in the NO_X mode, record the concentration.

(iii) Compare the observed concentration with the concentration assigned under the procedure in paragraph (b)(4) of this section. If the observed concentration is equal to or greater than 90 percent of the assigned concentration, the converter operation is satisfactory.

(c) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter, the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero-grade air or zero-grade nitrogen.

(3) Calibrate on each normally used operating range with NO-in-N_2 calibration gases with nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

(d) If a stainless steel NO_2 to NO converter is used, condition all new or replacement converters. The conditioning consists of either purging the converter with air for a minimum of 4 hours or until the converter efficiency is greater than 90 percent. The converter must be at operational temperature while purging. Do not use this procedure prior to checking converter efficiency on in-use converters.

BILLING CODE 6560–50–P

Figure to § 92.121

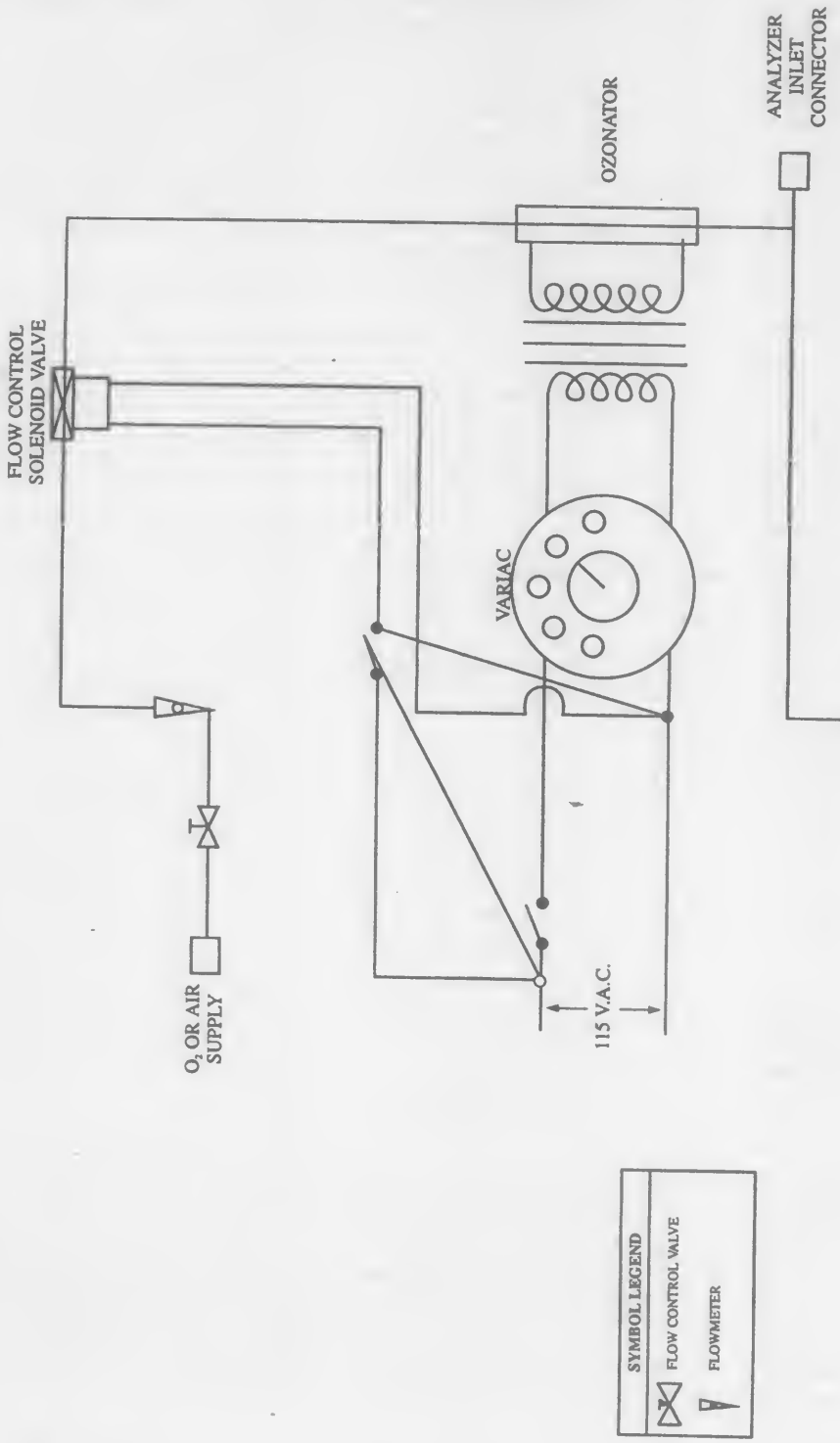

Figure B121-1 NOx CONVERTER EFFICIENCY DETECTOR

BILLING CODE 6560-50-C

§ 92.122 Smoke meter calibration.

The smokemeter shall be checked according to the following procedure prior to each test:

(a) The zero control shall be adjusted under conditions of "no smoke" to give a recorder or data collection equipment response of zero;

(b) Calibrated neutral density filters having approximately 10, 20, and 40 percent opacity shall be employed to check the linearity of the instrument. The filter(s) shall be inserted in the light path perpendicular to the axis of the beam and adjacent to the opening from which the beam of light from the light source emanates, and the recorder response shall be noted. Filters with exposed filtering media should be checked for opacity every six months; all other filters shall be checked every year, using NIST or equivalent reference filters. Deviations in excess of 1 percent of the nominal opacity shall be corrected.

§ 92.123 Test procedure; general requirements.

(a) The locomotive/locomotive engine test procedure is designed to determine the brake specific emissions of hydrocarbons (HC, total or non-methane as applicable), total hydrocarbon equivalent (THCE) and aldehydes (as applicable), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulates, and the opacity of smoke emissions. The test procedure consists of measurements of brake specific emissions and smoke opacity at each throttle position and of measurements of smoke opacity during each change in throttle position as engine power is increased. If less than 2 percent of the total exhaust flow is removed for gaseous and particulate sampling in notches 1 through 8, and if less than 4 percent of the total exhaust flow is removed for gaseous and particulate sampling at idle and dynamic brake, all measurements of gaseous, particulate and smoke emissions may be performed during one test sequence. If more than 2 percent, or 4 percent as applicable, of the total exhaust is removed for gaseous and particulate sampling, measurements of gaseous, and particulate emissions are performed during one test sequence, and a second test sequence is performed for the measurement of smoke.

(1) In the raw exhaust sampling procedure, sample is collected directly from the exhaust stream during each throttle setting. Particulates are collected on filters following dilution with ambient air of another raw exhaust sample. The fuel flow rate for each throttle setting is measured.

(2) For locomotives with multiple exhaust stacks, smoke testing is only required for one of the exhaust stacks provided the following conditions are met:

(i) The stack that is not tested is not visibly smokier than the stack that is tested; and

(ii) None of the measured opacity values for the stack tested are not greater than three-quarters of the level allowed by any of the applicable smoke standards.

(b) The test consists of prescribed sequences of engine operating conditions (see §§ 92.124 and 92.126) to be conducted either on a locomotive; or with the engine mounted on an engine dynamometer, or attached to a locomotive alternator/generator.

(1) *Locomotive testing.* (i) The electrical power output produced by the alternator/generator at each throttle setting is recorded as measurements of either the wattmeter or the output voltage, phase angle, and current flow through the electrical resistance bank.

(ii) The locomotive fuel supply system shall be disconnected and a system capable of measuring the net rate at which fuel is supplied to the engine (accounting for fuel recycle) shall be connected.

(2) *Engine testing.* (i) When the test is performed using a dynamometer, engine torque and rpm shall be recorded during each throttle setting.

(ii) The complete engine shall be tested, with all emission control devices, and charge air cooling equipment installed and functioning.

(iii) On air-cooled engines, the engine cooling fan shall be installed.

(iv) Additional accessories (e.g., air compressors) shall be installed or their loading simulated if typical of the in-use application. In the case of simulated accessory loadings, the manufacturer shall make available to the Administrator documentation which shows that the simulated loading is representative of in-use operation. Power for accessories necessary to operate the engine (such as fuel pumps) shall be treated as parasitic losses and would not be included in the engine power output for purposes of calculating brake specific emissions.

(v) The engine may be equipped with a production type starter.

(vi) Means of engine cooling shall be used which will maintain the engine operating temperatures (e.g., temperatures of intake air downstream of charge air coolers, oil, water, etc.) at approximately the same temperature as would occur in a locomotive at each test point under the equivalent ambient conditions. In the case of engine intake air after compression and cooling in the charge air cooler(s), the temperature of the air entering the engine shall be within ±5°F, at each test point, of the typical temperatures occurring in locomotive operations under ambient conditions represented by the test. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. If antifreeze is to be used in the locomotive application, antifreeze mixtures and other coolants typical of those approved for use in the locomotive may be used.

(vii) The provisions of paragraph (b)(1)(i) of this section apply to engine testing using a locomotive alternator/generator instead of a dynamometer.

§ 92.124 Test sequence; general requirements.

(a) *Air temperature.* (1) The temperature of dilution air for the particulate sample dilution tunnel shall comply with the requirements of § 92.114 throughout the test sequence.

(2) For the testing of locomotives and engines, the ambient (test cell or out-of-door) air temperature, the temperature of the engine intake air, and the temperature of the air which provides cooling for the engine charge air cooling system shall be between 45°F (7°C) and 105°F (41°C) throughout the test sequence. Manufacturers and remanufacturers may test at higher temperatures without approval from the Administrator, but no corrections are allowed for the deviations from test conditions.

(b) For the testing of locomotives and engines, the atmospheric pressure shall be between 31.0 inches Hg and 26.0 inches Hg throughout the test sequence. Manufacturers and remanufacturers may test at lower pressures without approval from the Administrator, but no corrections are allowed for the deviations from test conditions.

(c) No control of humidity is required for ambient air, engine intake air or dilution air.

(d)*Flow restrictions.* (1) *Locomotive testing.* Restrictions to the flow of air into the engine and of exhaust out of the engine shall be those inherent to the locomotive. No adjustments or changes shall be made to these parameters. The temperature of the inlet fuel to the engine shall not exceed 125°F.

(2) *Engine testing.* (i) Air inlet and exhaust restrictions shall be set to represent the average restrictions which would be seen in use in a representative application.

(ii) Inlet depression and exhaust backpressure shall be set with the engine operating at rated speed and maximum power, i.e., throttle notch 8.

(iii) The locations at which the inlet depression and exhaust backpressure are measured shall be specified by the manufacturer or remanufacturer.

(iv) The settings shall be made during the preconditioning.

(e) Pre-test engine measurements (e.g., idle and throttle notch speeds, fuel flows, etc.), pre-test engine performance checks (e.g., verification of engine power, etc.) and pre-test system calibrations (e.g., inlet and exhaust restrictions, etc.) can be done during engine preconditioning, or at the manufacturer's convenience subject to the requirements of good engineering practice.

(f) The required test sequence is described in Table B124–1 of this section, as follows:

TABLE B124–1.—TEST SEQUENCE FOR LOCOMOTIVES AND LOCOMOTIVE ENGINES

Mode No.	Notch setting	Time in notch	Emissions measured [2]	Power, and fuel consumption measured
Warmup	Notch 8	5 ± 1 min	None	None.
Warmup	Lowest Idle	15 min maximum	None	None.
1a	Low Idle [1]	6 min minimum	All	Both.
1	Normal Idle	6 min minimum	All	Both.
2	Dynamic Brake [1]	6 min minimum	All	Both.
3	Notch 1	6 min minimum	All	Both.
4	Notch 2	6 min minimum	All	Both.
5	Notch 3	6 min minimum	All	Both.
6	Notch 4	6 min minimum	All	Both.
7	Notch 5	6 min minimum	All	Both.
8	Notch 6	6 min minimum	All	Both.
9	Notch 7	6 min minimum	All	Both.
10	Notch 8	15 min minimum	All	Both.

[1] Omit if not so equipped.

[2] The EPA test sequence for locomotives and locomotive engines may be performed once, with gaseous, particulate and smoke measurements performed simultaneously, or it may be performed twice with gaseous, and particulate measurements performed during one test sequence and smoke measurements performed during the other test sequence.

§ 92.125 Pre-test procedures and preconditioning.

(a) *Locomotive testing.* (1) Determine engine lubricating oil and coolant levels and fill as necessary to manufacturers recommended full levels.

(2) Connect fuel supply system and purge as necessary; determine that the fuel to be used during emission testing is in compliance with the specifications of § 92.113.

(3) Install instrumentation, engine loading equipment and sampling equipment as required.

(4) Operate the engine until it has reached the specified operating temperature.

(b) *Engine testing.* (1) Determine engine lubricating oil level and fill as necessary to manufacturers recommended full level.

(2)(i) Connect fuel supply system and purge as necessary; determine that the fuel to be used during emission testing is in compliance with the specifications of § 92.113.

(ii) Connect engine cooling system.

(3) Install instrumentation, and sampling equipment as required. Couple the engine to the dynamometer or locomotive alternator/generator.

(4) Start cooling system.

(5) Operate the engine until it has reached the specified operating temperature.

(6) Establish that the temperature of intake air entering the engine after compression and cooling in the charge air cooler(s), at each test point, is within ±5 °F of the temperatures which occur in locomotive operations at the ambient temperature represented by the test.

(c) *Both locomotive and engine testing.* (1) Allow a minimum of 30 minutes warm-up in the stand-by or operating mode prior to spanning the analyzers.

(2) Replace or clean filter elements (sampling and analytical systems) as necessary, and then vacuum leak check the system, § 92.118. A pressure leak check is also permitted per § 92.118. Allow the heated sample line, filters, and pumps to reach operating temperature.

(3) Perform the following system checks:

(i) If a stainless steel NO_2 to NO converter is used, purge the converter with air (zero-grade air, room air, or O_2) for a minimum of 30 minutes. The converter must be at operational temperature while purging.

(ii) Check the sample system temperatures (see § 92.114).

(iii) Check the system response time (see § 92.118). System response time may be applied from the most recent check of response time if all of the following are met:

(A) The flow rate for each flow meter is equal to or greater than the flow rate recorded in § 92.118.

(B) For analyzers with capillaries, the response time from the sample/span valve is measured using in-use pressures and bypass flows (see § 92.118).

(C) The response time measured in step in paragraph (c)(3)(iii)(B) of this section is equal to or less than the slowest response time determined for *Capillary flow analyzers* in § 92.118 plus 2 seconds.

(iv) A hang-up check is permitted.

(v) A converter-efficiency check is permitted. The check need not conform to § 92.121. The test procedure may be aborted at this point in the procedure in order to repair the NO_2 to NO converter. If the test is aborted, the converter must pass the efficiency check described in § 92.121 prior to starting the test run.

(4) Introduce the zero-grade gases at the same flow rates and pressures used to calibrate the analyzers and zero the analyzers on the lowest anticipated range that will be used during the test. Immediately prior to each test, obtain a stable zero for each anticipated range that will be used during the test.

(5) Introduce span gases to the instruments under the same flow conditions as were used for the zero gases. Adjust the instrument gains on the lowest range that will be used to give the desired value. Span gases should have a concentration greater than 70 percent of full scale for each

range used. Immediately prior to each test, record the response to the span gas and the span-gas concentration for each range that will be used during the test.

(6) Check the zero responses. If they have changed more than 0.5 percent of full scale, repeat paragraphs (c)(4) and (5) of this section.

(7) Check system flow rates and pressures. Note the values of gauges for reference during the test.

§ 92.126 Test run.

(a) The following steps shall be taken for each test:

(1) Prepare the locomotive, engine, dynamometer, (as applicable) and sampling system for the test. Change filters, etc. and leak check as necessary.

(2) Connect sampling equipment as appropriate for the sampling procedure employed; i.e. raw or dilute (evacuated sample collection bags, particulate, and raw exhaust sampling equipment, particulate sample filters, fuel flow measurement equipment, etc.).

(3) Start the particulate dilution tunnel, the sample pumps, the engine cooling fan(s) (engine dynamometer testing) and the data collection and sampling systems (except particulate sample collection). The heated components of any continuous sampling systems(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins.

(4) Adjust the sample flow rates to the desired flow rates and set gas flow measuring devices to zero (particulate dilution tunnel).

(5) Read and record all required general and pre-test data (i.e., all required data other than data that can only be collected during or after the emission test).

(6) Warm-up the locomotive or locomotive engines according to normal warm-up procedures.

(7) Begin the EPA Test Sequence for Locomotives and Locomotive Engines (see § 92.124). Record all required general and test data throughout the duration of the test sequence.

(i) Mark the start of the EPA Test Sequence for Locomotives and Locomotive Engines on all data records.

(ii) Begin emission measurement after completing the warmup phase of the EPA Test Sequence for Locomotives and Locomotive Engines, as specified in paragraph (b) of this section. Mark the start and end of each mode on all data records.

(iii) A mode shall be voided where the requirements of this subpart that apply to that test mode are not met. This includes the following:

(A) The data acquisition is terminated prematurely; or

(B) For engine testing, the engine speed or power output exceeds the tolerance bands established for that mode; or

(C) Measured concentrations exceed the range of the instrument; or

(D) The test equipment malfunctions.

(iv) Modes within the test sequence shall be repeated if it is voided during the performance of the test sequence. A mode can be repeated by:

(A) Repeating the two preceding modes and then continuing with the test sequence, provided that the locomotive or engine is not shut down after the voided test mode; or

(B) Repeating the preceding mode and then continuing with the test sequence from that point, provided that the locomotive or engine is not operated in any mode with lower power than the preceding mode after the voided test mode. For example, if the Notch 2 mode is voided, then the locomotive or engine would be returned to Notch 1 while any repairs are made.

(b) *Sampling and measurement timing.* (1) Gaseous emissions shall be sampled and measured continuously.

(2)(i) Sampling of particulate emissions from the raw exhaust (for dilution) shall be conducted continuously.

(ii) Sampling of particulates from the diluted exhaust shall begin within ten seconds after the beginning of each test mode, and shall end six minutes after the beginning of each test mode.

(iii) Sampling of CO_2 in the dilution air and diluted exhaust does not need to be continuous, but the measurements used for the calculations must be made after the first two minutes of each mode.

(3) Fuel flow rate shall be measured continuously. The value reported for the fuel flow rate shall be a one-minute average of the instantaneous fuel flow measurements taken during the last minute of the minimum sampling period listed in Table B124–1 in § 92.124; except for testing during idle modes, where it shall be a three-minute average of the instantaneous fuel flow measurements taken during the last three minutes of the minimum sampling period listed in Table B124–1 in § 92.124. Sampling periods greater than one minute, but no greater than three minutes are allowed for modes 2, 3, and 4, where required by good engineering practice.

(4) Engine power shall be measured continuously. The value reported for the engine power shall be a one-minute average of the instantaneous power measurements taken during the last minute of the minimum sampling period listed in Table B124–1 in § 92.124.

(c) *Exhaust gas measurements.* (1) Should the analyzer response exceed 100 percent of full scale or respond less than 15 percent of full scale, the next higher or lower analyzer range shall be used.

(2) Each analyzer range that may be used during a test sequence must have the zero and span responses recorded prior to the execution of the test sequence. Only the range(s) used to measure the emissions during a test sequence are required to have their zero and span recorded after the completion of the test sequence.

(3) It is permitted to change filter elements between test modes, provided such changes do not cause a mode to be voided.

(4) A leak check is permitted between test modes, provided such changes do not cause a mode to be voided.

(5) A hang-up check is permitted between test modes, provided such changes do not cause a mode to be voided.

(6) If, during the emission measurement portions of a test, the value of the gauges downstream of the NDIR analyzer(s) differs by more than ±2 inches of water from the pretest value, the test is void.

(7)(i) For bag samples, as soon as possible transfer the exhaust and dilution air bag samples to the analytical system and process the samples.

(ii) A stabilized reading of the exhaust sample bag on all applicable analyzers shall be made within 20 minutes of the end of the sample collection phase of the mode.

§ 92.127 Emission measurement accuracy.

(a) Good engineering practice dictates that exhaust emission sample analyzer readings below 15 percent of full scale chart deflection should generally not be used.

(b) Some high resolution read-out systems such as computers, data loggers, etc., can provide sufficient accuracy and resolution below 15 percent of full scale. Such systems may be used provided that additional calibrations are made to ensure the accuracy of the calibration curves. The following procedure for calibration below 15 percent of full scale may be used:

(1) If a 16-point gas divider is used, 50 percent of the calibration points shall be below 10 percent of full scale. The gas divider shall conform to the accuracy requirements specified in § 92.112.

(2) If a 7- or 9-point gas divider is used, the gas divider shall conform to the accuracy requirements specified in

§ 92.112, and shall be used according to the following procedure:

(i) Span the full analyzer range using a top range calibration gas meeting the calibration gas accuracy requirements of § 92.112.

(ii) Generate a calibration curve according to, and meeting the applicable requirements of §§ 92.118 through 92.122.

(iii) Select a calibration gas (a span gas may be used for calibrating the CO_2 analyzer) with a concentration between the two lowest non-zero gas divider increments. This gas must be "named" to an accuracy of ±1.0 percent (±2.0 percent for CO_2 span gas) of NIST gas standards, or other standards approved by the Administrator.

(iv) Using the calibration curve fitted to the points generated in paragraphs (b)(2)(i) and (ii) of this section, check the concentration of the gas selected in paragraph (b)(2)(iii) of this section. The concentration derived from the curve shall be within ±2.3 percent (±2.8 percent for CO_2 span gas) of the gas' original named concentration.

(v) Provided the requirements of paragraph (b)(2)(iv) of this section are met, use the gas divider with the gas selected in paragraph (b)(2)(iii) of this section and determine the remainder of the calibration points. Fit a calibration curve per §§ 92.118 through 92.122 for the entire analyzer range.

§ 92.128 Particulate handling and weighing.

(a) At least 1 hour before the test, place each filter in a closed (to eliminate dust contamination) but unsealed (to permit humidity exchange) petri dish and place in a weighing chamber meeting the specifications of § 92.110(a) of this section for stabilization.

(b) At the end of the stabilization period, weigh each filter on the microbalance. This reading is the tare weight and must be recorded.

(c) The filter shall then be stored in a covered petri dish or a sealed filter holder until needed for testing. If the filters are transported to a remote test location, the filter pairs, stored in individual petri dishes, should be transported in sealed plastic bags to prevent contamination. At the conclusion of a test run, the filters should be removed from the filter holder, and placed face to face in a covered but unsealed petri dish, with the primary filter placed face up in the dish. The filters shall be weighed as a pair. If the filters need to be transported from a remote test site, back to the weighing chamber, the petri dishes should be placed in a sealed plastic bag to prevent contamination. Care should be taken in transporting the used filters such that they are not exposed to excessive, sustained direct sunlight, or excessive handling.

(d) After the emissions test, and after the sample and back-up filters have been returned to the weighing room after being used, they must be conditioned for at least 1 hour but not more than 80 hours and then weighed. This reading is the gross weight of the filter and must be recorded.

(e) The net weight of each filter is its gross weight minus its tare weight. Should the sample on the filter contact the petri dish or any other surface, the test is void and must be rerun.

(f) The particulate filter weight (Pf) is the sum of the net weight of the primary filter plus the net weight of the backup filter.

(g) The following optional weighting procedure is permitted:

(1) At the end of the stabilization period, weigh both the primary and back-up filters as a pair. This reading is the tare weight and must be recorded.

(2) After the emissions test, in removing the filters from the filter holder, the back-up filter is inverted on top of the primary filter. They must then be conditioned in the weighing chamber for at least 1 hour but not more than 80 hours. The filters are then weighed as a pair. This reading is the gross weight of the filters (Pf) and must be recorded.

(3) Paragraphs (a), (c), and (e) of this section apply to this option, except that the word "filter" is replaced by "filters".

§ 92.129 Exhaust sample analysis.

(a) The analyzer response may be read by automatic data collection (ADC) equipment such as computers, data loggers, etc. If ADC equipment is used the following is required:

(1) The response complies with § 92.130.

(2) The response required in paragraph (a)(1) of this section may be stored on long-term computer storage devices such as computer tapes, storage discs, or they may be printed in a listing for storage. In either case a chart recorder is not required and records from a chart recorder, if they exist, need not be stored.

(3) If the data from ADC equipment is used as permanent records, the ADC equipment and the analyzer values as interpreted by the ADC equipment are subject to the calibration specifications in §§ 92.118 through 92.122, as if the ADC equipment were part of the analyzer.

(b) Data records from any one or a combination of analyzers may be stored as chart recorder records.

(c) Software zero and span.

(1) The use of "software" zero and span is permitted. The process of software zero and span refers to the technique of initially adjusting the analyzer zero and span responses to the calibration curve values, but for subsequent zero and span checks the analyzer response is simply recorded without adjusting the analyzer gain. The observed analyzer response recorded from the subsequent check is mathematically corrected back to the calibration curve values for zero and span. The same mathematical correction is then applied to the analyzer's response to a sample of exhaust gas in order to compute the true sample concentration.

(2) The maximum amount of software zero and span mathematical correction is ±10 percent of full scale chart deflection.

(3) Software zero and span may be used to switch between ranges without adjusting the gain of the analyzer.

(4) The software zero and span technique may not be used to mask analyzer drift. The observed chart deflection before and after a given time period or event shall be used for computing the drift. Software zero and span may be used after the drift has been computed to mathematically adjust any span drift so that the "after" span check may be transformed into the "before" span check for the next mode.

(d) For sample analysis perform the following sequence:

(1) Warm-up and stabilize the analyzers; clean and/or replace filter elements, conditioning columns (if used), etc., as necessary.

(2) Leak check portions of the sampling system that operate at negative gauge pressures when sampling, and allow heated sample lines, filters, pumps, etc., to stabilize at operating temperature.

(3) Optional: Perform a hang-up check for the HFID sampling system:

(i) Zero the analyzer using zero air introduced at the analyzer port.

(ii) Flow zero air through the overflow sampling system, where an overflow system is used. Check the analyzer response.

(iii) If the overflow zero response exceeds the analyzer zero response by 2 percent or more of the HFID full-scale deflection, hang-up is indicated and corrective action must be taken.

(iv) The complete system hang-up check specified in paragraph (f) of this section is recommended as a periodic check.

(4) Obtain a stable zero reading.

(5) Zero and span each range to be used on each analyzer used prior to the

beginning of the test sequence. The span gases shall have a concentration between 75 and 100 percent of full scale chart deflection. The flow rates and system pressures shall be approximately the same as those encountered during sampling. The HFID analyzer shall be zeroed and spanned through the overflow sampling system, where an overflow system is used.

(6) Re-check zero response. If this zero response differs from the zero response recorded in paragraph (d)(5) of this section by more than 1 percent of full scale, then paragraphs (d) (4), (5), and (6) of this section should be repeated.

(7) If a chart recorder is used, identify and record the most recent zero and span response as the pre-analysis values.

(8) If ADC equipment is used, electronically record the most recent zero and span response as the pre-analysis values.

(9) Measure (or collect a sample of) the emissions continuously during each mode of the test cycle. Indicate the start of the test, the range(s) used, and the end of the test on the recording medium (chart paper or ADC equipment). Maintain approximately the same flow rates and system pressures used in paragraph (d)(5) of this section.

(10) (i) Collect background HC, CO, CO_2, and NO_X in a sample bag (optional).

(ii) Measure the concentration of CO_2 in the dilution air and the diluted exhaust for particulate measurements.

(11) Perform a post-analysis zero and span check for each range used at the conditions specified in paragraph (d)(5) of this section. Record these responses as the post-analysis values.

(12) Neither the zero drift nor the span drift between the pre-analysis and post-analysis checks on any range used may exceed 3 percent for HC, or 2 percent for NO_X, CO, and CO_2, of full scale chart deflection, or the test is void. (If the HC drift is greater than 3 percent of full-scale chart deflection, hydrocarbon hang-up is likely.)

(13) Determine HC background levels (if necessary) by introducing the background sample into the overflow sample system.

(14) Determine background levels of NO_X, CO, or CO_2 (if necessary).

(e) HC hang-up. If HC hang-up is indicated, the following sequence may be performed:

(1) Fill a clean sample bag with background air.

(2) Zero and span the HFID at the analyzer ports.

(3) Analyze the background air sample bag through the analyzer ports.

(4) Analyze the background air through the entire sample probe system.

(5) If the difference between the readings obtained is 2 percent or more of the HFID full scale deflection:

(i) Clean the sample probe and the sample line;

(ii) Reassemble the sample system;

(iii) Heat to specified temperature; and

(iv) Repeat the procedure in this paragraph (e).

§ 92.130 Determination of steady-state concentrations.

(a)(1) For HC and NO_X emissions, a steady-state concentration measurement, measured after 300 seconds (or 840 seconds for notch 8) of testing shall be used instead of an integrated concentration for the calculations in § 92.132 if the concentration response meets either of the criteria of paragraph (b) of this section and the criterion of paragraph (c) of this section.

(2) For CO and CO_2 emissions, a steady-state concentration measurement, measured after 300 seconds (or 840 seconds for notch 8) of testing shall be used. The provisions of paragraphs (b) through (f) of this section do not apply for CO and CO_2 emissions.

(b) (1) The steady-state concentration is considered representative of the entire measurement period if the time-weighted concentration is not more than 10 percent higher than the steady-state concentration. The time-weighted concentration is determined by integrating the concentration response (with respect to time in seconds) over the first 360 seconds (or 900 seconds for notch 8) of measurement, and dividing the area by 360 seconds (or 900 seconds for notch 8).

(2) A steady-state concentration is considered representative of the entire measurement period if the estimated peak area is not more than 10 percent of the product of the steady-state concentration and 360 seconds (or 900 seconds for notch 8). The estimated peak area is calculated as follows, and as shown in Figure B130–1 of this section):

(i) Draw the peak baseline as a straight horizontal line intersecting the steady-state response.

(ii) Measure the peak height from the baseline with the same units as the steady-state concentration; this value is h.

(iii) Bisect the peak height by drawing a straight horizontal line halfway between the top of the peak and the baseline.

(iv) Draw a straight line from the top of the peak to the baseline such that it intersects the response curve at the same point at which the line described in paragraph (b)(2)(iii) of this section intersects the response curve.

(v) Determine the time between the point at which the notch was changed and the point at which the line described in paragraph (b)(2)(iv) of this section intersects the baseline; this value is t.

(vi) The estimated peak area is equal to the product of h and t, divided by 2.

(c) In order to be considered to be a steady-state measurement, a measured response may not vary by more than 5 percent after the first 60 seconds of measurement.

(d) For responses meeting either of the criteria of paragraph (b) of this section, but not meeting the criterion of paragraph (c) of this section, one of the following values shall be used instead of a steady-state or integrated concentration:

(1) The highest value of the response that is measured after the first 60 seconds of measurement (excluding peaks lasting less than 5 seconds, caused by such random events as the cycling of an air compressor); or

(2) The highest 60-second, time-weighted, average concentration of the response after the first 60 seconds of measurement.

(e) For responses not meeting the criterion in paragraph (c) of this section, the Administrator may require that the manufacturer or remanufacturer identify the cause of the variation, and demonstrate that it is not caused by a defeat device.

(f) The integrated concentration used for calculations shall be from the highest continuous 120 seconds of measurement.

(g) Compliance with paragraph (b)(2) of this section does not require calculation where good engineering practice allows compliance to be determined visually (i.e., that the area of the peak is much less than the limits set forth in paragraph (b)(2) of this section).

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Figure to § 92.130

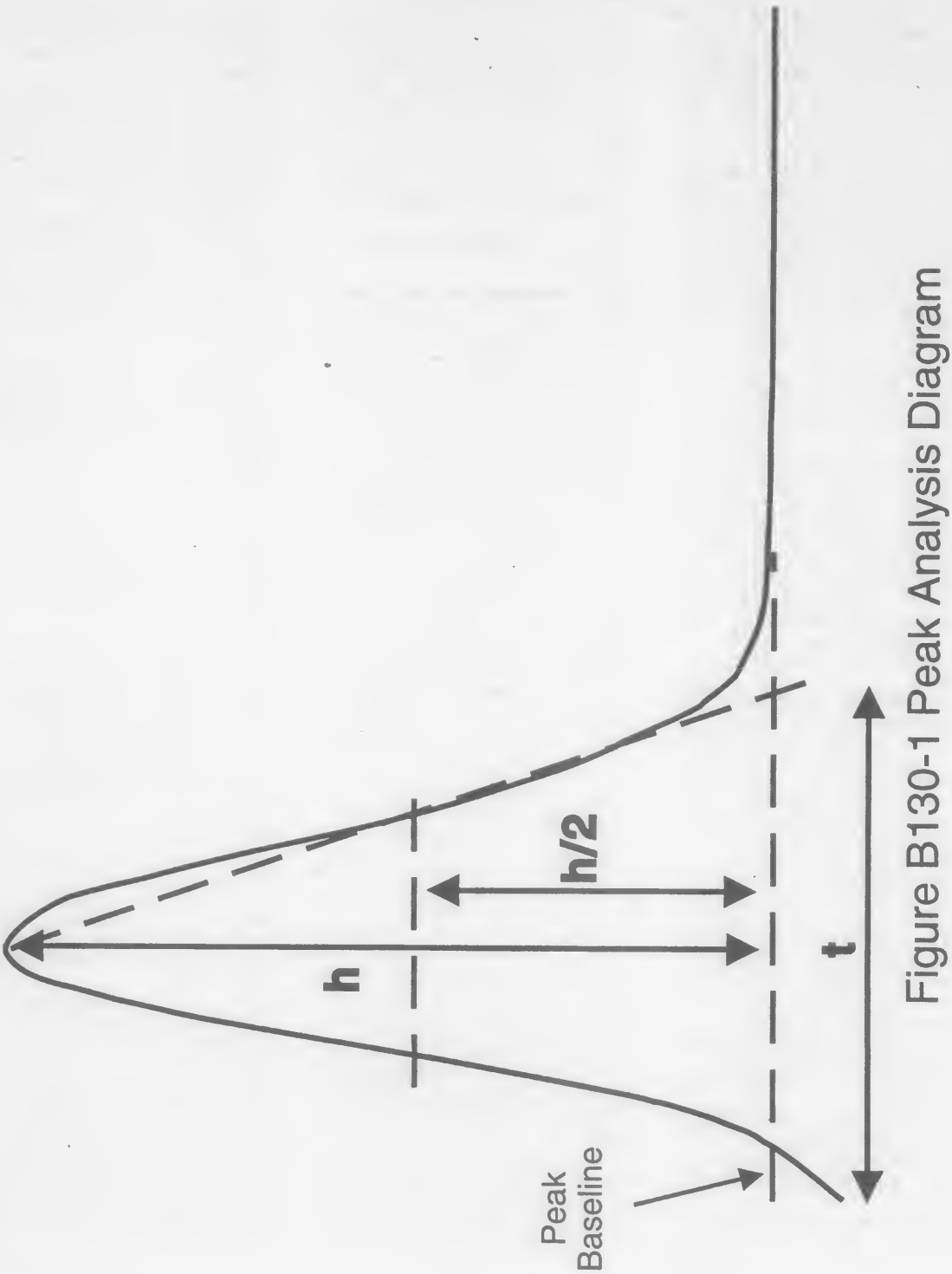

Figure B130-1 Peak Analysis Diagram

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§ 92.131 Smoke, data analysis.

The following procedure shall be used to analyze the smoke test data:

(a) Locate each throttle notch test mode, or percent rated power setting test mode. Each test mode starts when the throttle is placed in the mode and ends when the throttle is moved to the succeeding mode. The start of the first idle mode corresponds to the start of the test sequence.

(b) Analyze the smoke trace by means of the following procedure:

(1) Locate the highest reading, and integrate the highest 3-second average reading around it.

(2) Locate and integrate the highest 30-second average reading.

(3) The highest reading occurring more than two minutes after the notch change (excluding peaks lasting less than 5 seconds, caused by such random events as the cycling of an air compressor) is the "steady-state" value.

(c)(1) The values determined in paragraph (b) of this section shall be normalized by the following equation:

$$N_n = 100 \times \left[1 - \left[1 - \frac{N_m}{100}\right]^{1/L}\right]$$

Where:

N_n is the normalized percent opacity, N_m is the average measured percent opacity (peak or steady-state), and L is actual distance in meters from the point at which the light beam enters the exhaust plume to the point at which the light beam leaves the exhaust plume.

(2) The normalized opacity values determined in paragraph (c)(1) of this section are the values that are compared to the standards of subpart A of this part for determination of compliance.

(d) This smoke trace analysis may be performed by direct analysis of the recorder traces, or by computer analysis of data collected by automatic data collection equipment.

§ 92.132 Calculations.

(a) *Duty-cycle emissions.* This section describes the calculation of duty-cycle emissions, in terms of grams per brake horsepower hour (g/bhp-hr). The calculation involves the weighted summing of the product of the throttle notch mass emission rates and dividing by the weighted sum of the brake horsepower. The final reported duty-cycle emission test results are calculated as follows:

(1)(i) $E_{idc}=(\Sigma\ (M_{ij})\ (F_j))/(\Sigma\ (BHP_j)\ (F_j))$

Where:

E_{idc}=Duty-cycle weighted, brake-specific mass emission rate of pollutant i (i.e., HC, CO, NO_X or PM and, if appropriate, THCE or NMHC) in grams per brake horsepower-hour;

M_{ij}=the mass emission rate pollutant i for mode j;

F_j=the applicable weighting factor listed in Table B132–1 for mode j;

BHP_j=the measured brake horsepower for mode j.

(ii) Table B132–1 follows:

TABLE B132–1.—WEIGHTING FACTORS FOR CALCULATING EMISSION RATES

Throttle notch setting	Test mode	Locomotive not equipped with multiple idle notches		Locomotive equipped with multiple idle notches	
		Line-haul	Switch	Line-haul	Switch
Low Idle	1a	NA	NA	0.190	0.299
Normal Idle	1	0.380	0.598	0.190	0.299
Dynamic Brake	2	0.125	0.000	0.125	0.000
Notch 1	3	0.065	0.124	0.065	0.124
Notch 2	4	0.065	0.123	0.065	0.123
Notch 3	5	0.052	0.058	0.052	0.058
Notch 4	6	0.044	0.036	0.044	0.036
Notch 5	7	0.038	0.036	0.038	0.036
Notch 6	8	0.039	0.015	0.039	0.015
Notch 7	9	0.030	0.002	0.030	0.002
Notch 8	10	0.162	0.008	0.162	0.008

(2) Example: for the line-haul cycle, for locomotives equipped with normal and low idle, and with dynamic brake, the brake-specific emission rate for HC would be calculated as:

$E_{HCdc}=[(M_{HC1a})\ (0.190)+(M_{HC1})\ (0.190)+(M_{HC2})\ (0.125)+(M_{HC3})\ (0.065)+(M_{HC4})\ (0.065)+(M_{HC5})\ (0.052)+(M_{HC6})\ (0.044)+(M_{HC7})\ (0.038)+(M_{HC8})\ (0.039)+(M_{HC9})\ (0.030)+(M_{HC10})\ (0.162)]/[(BHP_{1a})\ (0.190)+(BHP_1)\ (0.190)+(BHP_2)\ (0.125)+(BHP_3)\ (0.065)+(BHP_4)\ (0.065)+(BHP_5)\ (0.052)+(BHP_6)\ (0.044)+(BHP_7)\ (0.038)+(BHP_8)\ (0.039)+(BHP_9)\ (0.030)+(BHP_{10})\ (0.162)]$

(3) In each mode, brake horsepower output is the power that the engine delivers as output (normally at the flywheel), as defined in § 92.2.

(i) For locomotive testing (or engine testing using a locomotive alternator/generator instead of a dynamometer), brake horsepower is calculated as:

$BHP=HP_{out}/A_{eff}+HP_{acc}$

Where:

HP_{out}=Measured horsepower output of the alternator/generator.

A_{eff}=Efficiency of the alternator/generator.

HP_{acc}=Accessory horsepower.

(ii) For engine dynamometer testing, brake horsepower is determined from the engine speed and torque.

(4) For locomotive equipped with features that shut the engine off after prolonged periods of idle, the measured mass emission rate M_{i1} (and M_{i1a} as applicable) shall be multiplied by a factor equal to one minus the estimated fraction reduction in idling time that will result in use from the shutdown feature. Application of this adjustment is subject to the Administrator's approval.

(b) *Throttle notch emissions.* This paragraph (b) describes the calculation of throttle notch emissions for all operating modes, including: idle (normal and low, as applicable); dynamic brake; and traction power points. The throttle notch (operating mode) emission test results, final reported values and values used in paragraph (a)(1) of this section are calculated as follows:

(1) Brake specific emissions (E_{ij}) in grams per brake horsepower-hour of each species i (i.e., HC, CO, NO_X or PM and, if appropriate, THCE or NMHC) for each mode j:

(i) $E_{HC\ mode}$=HC grams/BHP-hr=$M_{HC\ mode}$/Measured BHP in mode.

Where:

$M_{HC\ mode}$=Mass HC emissions (grams per hour) for each test mode.

(ii) $E_{THCE\ mode}$=THCE grams/BHP-hr=$M_{THCE\ mode}$/Measured BHP in mode.

Where:

$M_{THCE\ mode}$ (Total hydrocarbon equivalent mass emissions (grams per hour) for each test mode):

$=M_{HCj}+\Sigma\ (M_{ij})\ (MWC_p)/MWC_i$

M_{ij}=the mass emission rate oxygenated pollutant i for mode j.

MWC_i=the molecular weight of pollutant i divided by the number of carbon atoms per molecule of pollutant i.

MWC_p=the molecular weight of a typical petroleum fuel component divided by the number of carbon atoms per molecule of a typical petroleum fuel component=13.8756.

(iii) $E_{NMHC\ mode}$=NMHC grams/BHP-hr=$M_{NMHC\ mode}$/Measured BHP in mode.

Where:

$M_{NMHC\ mode}$=Mass NMHC emissions (grams per hour) for each test mode.

(iv) $E_{CO\ mode}$=CO grams/BHP-hr=$M_{CO\ mode}$/Measured BHP in mode.

Where:

$M_{CO\ mode}$=Mass CO emissions (grams per hour) for each test mode.

(v) $E_{NOx\ mode}$=NO_X grams/BHP–hr=$M_{NOx\ mode}$/Measured BHP in mode.

Where:

$M_{NOx\ mode}$=Mass NO_X emissions (grams per hour) for each test mode.

(vi) $E_{PM\ mode}$=PM grams/BHP–hr=$M_{PM\ mode}$/Measured BHP in mode.

Where:

$M_{PM\ mode}$=Mass PM emissions (grams per hour) for each test mode.

(vii) $E_{AL\ mode}$=Aldehydes grams/BHP–hr=$M_{AL\ mode}$/Measured BHP in mode.

(vii) $E_{AL\ mode}$=Aldehydes grams/BHP–hr=$M_{AL\ mode}$/Measured BHP in mode.

Where:

$M_{AL\ mode}$=Total aldehyde mass emissions (grams per hour) for each test mode.

(2) Mass Emissions—Raw exhaust measurements. For raw exhaust measurements mass emissions (grams per hour) of each species for each mode:

(i) General equations. (A) The mass emission rate, $M_{X\ mode}$ (g/hr), of each pollutant (HC, NO_X, CO_2, CO, CH_4 CH_3OH, CH_3CH_2OH, CH_2O, CH_3CH_2O) for each operating mode for raw measurements is determined based on one of the following equations:

$M_{X\ mode}=(DX/10^6)(DVol)(MW_X/V_m)$

$M_{X\ mode}=(WX/10^6)(WVol)(MW_X/V_m)$

Where:

X designates the pollutant (e.g., HC), DX is the concentration of pollutant X (ppm or ppmC) on a dry basis, MW_X is the molecular weight of the pollutant (g/mol), DVol is the total exhaust flow rate (ft^3/hr) on a dry basis, WX is the concentration of pollutant X (ppm or ppmC) on a wet basis, WVol is the total exhaust flow rate (ft^3/hr) on a wet basis, V_m is the volume of one mole of gas at standard temperature and pressure (ft^3/mol).

(B) All measured volumes and volumetric flow rates must be corrected to standard temperature and pressure prior to calculations.

(ii) The following abbreviations and equations apply to this paragraph (b)(2):

α=Atomic hydrogen/carbon ratio of the fuel.

β=Atomic oxygen/carbon ratio of the fuel.

CMW_f=Molecular weight of the fuel per carbon atom, or carbon molecular weight (g/moleC)=(12.011+1.008α+16.000β).

DCO=CO concentration in exhaust, ppm (dry).

DCO_2=CO_2 concentration in exhaust, percent (dry).

DHC=HC carbon concentration in exhaust, ppm C (dry).

DNOX=NO_X concentration in exhaust, in ppm (dry).

DVol=Total exhaust flow rate (ft^3/hr) on a dry basis; or

$=(V_m)(W_f)/((CMW_f)\ (DHC/10^6+DCO/10^6+DCO2/100))$.

K=Water gas equilibrium constant=3.5.

K_w=Wet to dry correction factor.

M_F=Mass flow-rate of fuel used in the engine in lb/hr=W_f/453.59.

MW_C=Atomic weight of carbon=12.011.

MW_{CO}=Molecular weight of CO=28.011.

MW_H=Atomic weight of hydrogen=1.008.

MW_{NO2}=Molecular weight of nitrogen dioxide (NO_2)=46.008.

MW_O=Molecular weight of atomic oxygen=16.000.

T=Temperature of inlet air (°F).

V_m=Volume of one mole of gas at standard temperature and pressure (ft^3/mole).

W_f=Mass flow-rate of fuel used in the engine, in grams/hr=(453.59)×(M_f lbs/hr).

WCO_2=CO_2 concentration in exhaust, percent (wet).

WHC=HC concentration in exhaust, ppm C (wet).

WVol=Total exhaust flow rate (ft^3/hr) on a wet basis; or

$=(V_m)(W_f)/((CMW_f)(WHC/10^6+WCO/10^6\ WCO2/100))$.

(iii) Calculation of individual pollutant masses. Calculations for mass emission are shown here in multiple forms. One set of equations is used when sample is analyzed dry (equations where the concentrations are expressed as DX), and the other set is used when the sample is analyzed wet (equations where the concentrations are expressed as WX). When samples are analyzed for some constituents dry and for some constituents wet, the wet concentrations must be converted to dry concentrations, and the equations for dry concentrations used. Also, the equations for HC, NMHC, CO, and NO_X have multiple forms that are algebraically equivalent: An explicit form that requires intermediate calculation of V_m and DVol or WVol; and an implicit form that uses only the concentrations (e.g., DCO) and the mass flow rate of the fuel. For these calculations, either form may be used.

(A) Hydrocarbons and nonmethane hydrocarbons.

(*1*) Hydrocarbons. (*i*) *For petroleum-fueled engines:*

$M_{HC\ mode}$
$=(DHC)CMW_f(DVol)(10^6)/V_m$
$=((DHC/10^6)(W_f)/((DCO/10^6)+(DCO_2/100)+(DHC/10^6)+(\Sigma DX/10^6)))$

$M_{HC\ mode}$
$=(WHC)CMW_f(WVol)(10^6)/V_m$
$=((WHC/10^6)(W_f)/((WCO/10^6)+(WCO_2/100)+(WHC/10^6)+(\Sigma(WX/10^6)))$

(*ii*) *For alcohol-fueled engines:*

$DHC=FID\ HC-\Sigma(r_x)(DX)$

$WHC=FID\ HC-\Sigma(r_x)(WX)$

Where:

FID HC=Concentration of "hydrocarbon" plus other organics such as methanol in exhaust as measured by the FID, ppm carbon equivalent.

r_x=FID response to oxygenated species×(methanol, ethanol, or acetaldehyde).

DX=Concentration of oxygenated species×(methanol, ethanol, or acetaldehyde) in exhaust as determined from the dry exhaust sample, ppm carbon (e.g., DCH3OH, 2(DCH3CH2OH)).

WX=Concentration of oxygenated species×(methanol, ethanol, or acetaldehyde) in exhaust as determined from the wet exhaust sample, ppm carbon.

ΣDX=The sum of concentrations DX for all oxygenated species.

ΣWX=The sum of concentrations WX for all oxygenated species.

(*2*) Nonmethane hydrocarbons:

$M_{NMHC\ mode}=(DNMHC)CMW_f(DVol)(10^6)/V_m$
$=((DNMHC/10^6)(W_f)/((DCO/10^6)+(DCO_2/100)+(DHC/10^6)))$

$M_{NMHC\ mode}=(WNMHC)CMW_f(WVol)(10^6)/V_m$

$=((WNMHC/10^6)(W_f)/((WCO/10^6)+(WCO_2/100)+(WHC/10^6)))$

Where:

$DNMHC=FID\ HC-(r_{CH4})(DCH4)$

$WNMHC=FID\ HC-(r_{CH4})(WCH4)$

FID HC=Concentration of "hydrocarbon" plus other organics such as methane in exhaust as measured by the FID, ppm carbon equivalent.

r_{CH4}=FID response to methane.

DCH4=Concentration of methane in exhaust as determined from the dry exhaust sample, ppm.

WCH4=Concentration of methane in exhaust as determined from the wet exhaust sample, ppm.

(B) Carbon monoxide:

$M_{CO\ mode}=(DCO)MW_{CO}(DVol)/10^6/V_m$

$=((MW_{CO}(DCO/10^6)(W_f)/((CMW_f)(DCO/10^6)+(DCO_2/100)+DHC/10^6)+(\Sigma DX/10^6)))$

$M_{CO\ mode}=(WCO)MW_{CO}(DVol)(10^6)/V_m$

$=((MW_{CO}(WCO/10^6)(W_f)/((CMW_f)(WCO/10^6)+(WCO_2/100)+WHC/10^6)+(\Sigma WX/10^6)))$

(C) Oxides of nitrogen:

$M_{NOx\ mode}=(DNOX)MW_{NO2}(DVol)(10^6)/V_m$

$=((MW_{NO2}(DNOX/10^6)(W_f)/((CMW_f)\{DCO/10^6)+(DCO_2/100)+(DHC/10^6)+(\Sigma DX/10^6)))$

$M_{NOx\ mode}=(WNOX)MW_{NO2}(DVol)(10^6)/V_m$

$=((MW_{NO2}(WNOX/10^6)(W_f)/((CMW_f)(WCO/10^6)+(WCO_2/100)+(WHC/10^6)+(\Sigma WX/10^6)))$

(D) Methanol:

$M_{CH3OH\ mode}=(DCH3OH/10^6)32.042(DVol)/V_m$

$M_{CH3OH\ mode}=(WCH3OH/10^6)32.042(WVol)/V_m$

Where:

$DCH3OH=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/DVol_{MS}$.

$WCH3OH=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/WVol_{MS}$.

C_i=concentration of methanol in impinger i (1 or 2) in mol/ml.

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.

$DVol_{MS}$=Volume (standard ft³) of exhaust sample drawn through methanol impingers (dry).

$WVol_{MS}$=Volume (standard ft³) of exhaust sample drawn through methanol impingers (wet).

(E) Ethanol:

$M_{CH3CH2OH\ mode}=(DCH3CH2OH/10^6)23.035(DVol)/V_m$

$M_{CH3CH2OH\ mode}=(WCH3CH2OH/10^6)23.035(WVol)/V_m$

Where:

$DCH3CH2OH=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/DVol_{ES}$.

$WCH3CH2OH=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/WVol_{ES}$.

C_i=concentration of ethanol in impinger i (1 or 2) in mol/ml.

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.

$DVol_{ES}$=Volume (standard ft³) of exhaust sample drawn through ethanol impingers (dry).

$WVol_{ES}$=Volume (standard ft³) of exhaust sample drawn through ethanol impingers (wet).

(F) Formaldehyde:

$M_{CH2O\ mode}=(DCH2O/10^6)30.026(DVol)/V_m$

$M_{CH2O\ mode}=(WCH2O/10^6)30.026(WVol)/V_m$

(*1*) If aldehydes are measured using impingers:

$DCH2O=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/DVol_{FS}$

$WCH2O=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/WVol_{FS}$

(*2*) If aldehydes are measured using cartridges:

$DCH2O=(V_m)(10^6)(C_R\times AV_R)/DVol_{FS}$

$WCH2O=(V_m)(10^6)(C_R\times AV_R)/WVol_{FS}$

(*3*) The following definitions apply to this paragraph (b)(2)(iii)(F):

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.

AV_R=Volume of absorbing reagent use to rinse the cartridge in ml.

C_i=concentration of formaldehyde in impinger i (1 or 2) in mol/ml.

C_R=concentration of formaldehyde in solvent rinse in mol/ml.

$DVol_{FS}$=Volume (standard ft³) of exhaust sample drawn through formaldehyde sampling system (dry).

$WVol_{FS}$=Volume (standard ft³) of exhaust sample drawn through formaldehyde sampling system (wet).

(G) Acetaldehyde:

$M_{CH3CHO\ mode}=(DCH3CHO/10^6)27.027(DVol)/V_m$

$M_{CH3CHO\ mode}=(WCH3CHO/10^6)27.027(WVol)/V_m$

(*1*) If aldehydes are measured using impingers:

$DCH3CHO=(V_m)(10^6)[(C_1\times AV_1)+(C_2\times AV_2)]/DVol_{AS}$

$WCH3CHO=(V_m)(10^6)[(C_1\times AV_1)+C_2\times AV_2)]/WVol_{AS}$

(*2*) If aldehydes are measured using cartridges:

$DCH3CHO=(V_m)(10^6)(C_R\times AV_R)/DVol_{AS}$

$WCH3CHO=(V_m)(10^6)(C_R\times AV_R)/WVol_{AS}$

(*3*) The following definitions apply to this paragraph (b)(2)(iii)(G):

AV_i=Volume of absorbing reagent in impinger i (1 or 2) in ml.

AV_R=Volume of absorbing reagent use to rinse the cartridge in ml.

C_i=concentration of acetaldehyde in impinger i (1 or 2) in mol/ml.

C_R=concentration of acetaldehyde in solvent rinse in mol/ml.

$DVol_{AS}$=Volume (standard ft³) of exhaust sample drawn through acetaldehyde sampling system (dry).

$WVol_{AS}$=Volume (standard ft³) of exhaust sample drawn through acetaldehyde sampling system (wet).

(iv) Conversion of wet concentrations to dry concentrations. Wet concentrations are converted to dry concentrations using the following equation:

$DX=K_W\ WX$

Where:

WX is the concentration of species X on a wet basis.

DX is the concentration of species X on a dry basis.

K_W is a conversion factor=WVol/DVol=1+DH2O.

(A) Iterative calculation of conversion factor. The conversion factor K_W is calculated from the fractional volume of water in the exhaust on a dry basis (DH2O=volume of water in exhaust/dry volume of exhaust). Precise calculation of the conversion factor K_W must be done by iteration, since it requires the dry concentration of HC, but HC emissions are measured wet.

(*1*) The conversion factor is calculated by first assuming DHC=WHC to calculate DVol:

$DVol=(V_m)(W_f)/((CMW_f)(DHC/10^6+DCO/10^6+DCO2/100))$

(*2*) This estimate is then used in the following equations to calculate $DVol_{air}$, then DH2O, then K_W, which allows DHC to be determined more accurately from WHC:

$$DH2O=\left[\frac{\alpha\left(\frac{DCO2}{10^2}+\frac{DCO}{10^6}\right)}{2}+\frac{(Y)(DVol_{air})}{DVol}\right]\left[\frac{1}{1+\frac{DCO}{(DCO2)(K)(10^4)}}\right]$$

Where:

Y=Water volume concentration in intake air, volume fraction (dry).
$DVol_{air}$=Air intake flow rate (ft^3/hr) on a dry basis, measured, or calculated as:

$$DVol_{air} = DVol\left[1-\left(\frac{DCO2}{10^2}\right)\left(\frac{\alpha}{4}\right)-\frac{DCO}{10^6}\left(\frac{\alpha}{4}+0.5\right)\right].$$

(*3*) The calculations are repeated using this estimate of DHC. If the new estimate for K_W is not within one percent of the previous estimate, the iteration is repeated until the difference in K_W between iterations is less than one percent.

(B) Alternate calculation of DH2O (approximation). The following approximation may be used for DH2O instead of the calculation in paragraph (b)(2)(iv)(A) of this section:

$$DH2O = \left[\frac{\alpha\left(\frac{DCO2}{10^2}+\frac{DCO}{10^6}\right)}{2}+(Y)\left(DVol_{Ratio}\right)\right]\left[\frac{1}{1+\frac{DCO}{(DCO2)(K)(10^4)}}\right]$$

Where:

$$DVol_{ratio} = \frac{DVol_{air}}{DVol} = \left[1-\left(\frac{DCO2}{10^2}\right)\left(\frac{\alpha}{4}\right)-\frac{DCO}{10^6}\left(\frac{\alpha}{4}+0.5\right)\right]$$

Y=Water volume concentration in intake air, volume fraction (dry).

(3) *Mass Emissions—Dilute exhaust measurements.* For dilute exhaust measurements mass emissions (grams per hour) of each species for each mode:

(i) *General equations.* The mass emission rate, $M_{x\ mode}$ (g/hr) of each pollutant (HC, NO_X, CO2, CO, CH4 CH3OH, CH3CH2OH, CH2O, CH3CH2O) for each operating mode for bag measurements and diesel continuously heated sampling system measurements is determined from the following equation:

$M_{x\ mode}=(V_{mix})(Density_x)(X_{conc})/(V_f)$

Where:

x designates the pollutant (e.g., HC). V_{mix} is the total diluted exhaust volumetric flow rate (ft^3/hr), $Density_x$ is the specified density of the pollutant in the gas phase (g/ft^3), X_{conc} is the fractional concentration of pollutant x (i.e., ppm/10^6, ppmC/10^6, or %/100), and V_f is the fraction of the raw exhaust that is diluted for analysis.

(ii) The following abbreviations and equations apply to paragraphs (b)(3)(i) through (b)(3)(iii)(J) of this section:

(A) DF=Dilution factor, which is the volumetric ratio of the dilution air to the raw exhaust sample for total dilution, calculated as:

$$DF = \frac{WCO2 - WCO2_d}{WCO2_e - WCO2_d} - 1$$

Where:

WCO2=Carbon dioxide concentration of the raw exhaust sample, in percent (wet).
$WCO2_e$=Carbon dioxide concentration of the dilute exhaust sample, in percent (wet).
$WCO2_d$=Carbon dioxide concentration of the dilution air, in percent (wet).

(B) V_{mix}=Diluted exhaust volumetric flow rate in cubic feet per hour corrected to standard conditions (528°R, and 760 mm Hg).

(C) V_f=Fraction of the total raw exhaust that is diluted for analysis.

$=((CO2_{conc}/10^2)+(CO_{conc}/10^6)+(HC_{conc}/10^6))(V_{mix})(CMW_f)/V_m/M_f$

(iii) Calculation of individual pollutants.

(A) $M_{HC\ mode}$=Hydrocarbon emissions, in grams per hour by mode, are calculated using the following equations:

$M_{HC\ mode}=(V_{mix})(Density_{HC})(HC_{conc}/10^6)/V_f$

$HC_{conc}=HC_e-(HC_d)(1-(1/DF))$

$HC_e=FID\ HC_e-\Xi(r_x)(X_e)$

Where:

$Density_{HC}$=Density of hydrocarbons=16.42 g/ft^3 (0.5800 kg/m_3) for # l petroleum diesel fuel, 16.27 g/ft^3 (0.5746 kg/m_3) for #2 diesel, and 16.33 g/ft^3 (0.5767 kg/m^3) for other fuels, assuming an average carbon to hydrogen ratio of 1:1.93 for #1 petroleum diesel fuel, 1:1.80 for #2 petroleum diesel fuel, and 1:1.85 for hydrocarbons in other fuels at standard conditions.
HC_{conc}=Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane×3).
HC_e=Hydrocarbon concentration of the dilute exhaust bag sample, or for diesel continuous heated sampling systems, average hydrocarbon concentration of the dilute exhaust sample as determined from the integrated HC traces, in ppm carbon equivalent. For petroleum-fueled engines, HC_e is the FID measurement. For methanol-fueled and ethanol-fueled engines:
FID HC_e=Concentration of hydrocarbon plus methanol, ethanol and acetaldehyde in dilute exhaust as measured by the FID, ppm carbon equivalent.
r_x=FID response to oxygenated species x (methanol, ethanol or acetaldehyde).
X_e=Concentration of species x (methanol, ethanol or acetaldehyde) in dilute exhaust as determined from the dilute exhaust sample, ppm carbon.
HC_d=Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(B) $M_{NOx\ mode}$ = Oxides of nitrogen emissions, in grams per hour by mode, are calculated using the following equations:

$M_{NOx\ mode}=(V_{mix})\ (Density_{NO2})\ (NOx_{conc}/10^6)\ /V_f$

$NOx_{conc}=(NOx_e - NOx_d\ (1-(1/DF)))$

Where:

$Density_{NO2}$=Density of oxides of nitrogen is 54.16 g/ft^3 (1.913 kg/m^3), assuming they are in the form of nitrogen dioxide, at standard conditions.
NOx_{conc}=Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.
NOx_e=Oxides of nitrogen concentration of the dilute exhaust bag sample as measured, in ppm.
NOx_d=Oxides of nitrogen concentration of the dilution air as measured, in ppm.

(C) $M_{CO2\ mode}$=Carbon dioxide emissions, in grams per hour by mode,

are calculated using the following equations:

$M_{CO2\ mode}=(V_{mix})\ (Density_{CO2})\ (CO_{2conc}/10^2)\ /V_f$

$CO_{2conc}=CO_{2e}-CO_{2d}\ (1-(1/DF))$

Where:

Density CO_2=Density of carbon dioxide is 51.81 g/ft³ (1.830 kg/m³), at standard conditions.

CO_{2conc}=Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

CO_{2e}=Carbon dioxide concentration of the dilute exhaust bag sample, in percent.

CO_{2d}=Carbon dioxide concentration of the dilution air as measured, in percent.

(D)(1) $M_{CO\ mode}$=Carbon monoxide emissions, in grams per hour by mode, are calculated using the following equations:

$M_{CO\ mode}=(V_{mix})\ (Density_{CO})\ (CO_{conc}/10^6)\ /V_f$

$CO_{conc}=CO_e-CO_d\ (1-(1/DF))$

$CO_d=(1-0.000323R)CO_{dm}$

Where:

$Density_{CO}$=Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at standard conditions.

CO_{conc}=Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, ppm.

CO_e=Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm.

$CO_e=(1-(0.01+0.005/\alpha)\ CO_{2e}-0.000323RH)CO_{em}$, where α is the hydrogen to carbon ratio as measured for the fuel used.

CO_{em}=Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

RH = Relative humidity of the dilution air, percent.

CO_d=Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

CO_{dm}=Carbon monoxide concentration of the dilution air sample as measured, in ppm.

(2) If a CO instrument which meets the criteria specified in § 86.1311 of this chapter is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO_e, and CO_{dm} must be substituted directly for CO_d.

(E) $M_{CH4\ mode}$=Methane emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH4\ mode}=(V_{mix})\ (Density_{CH4})\ (CH_{4conc}/10^6)\ /V_f$

$CH_{4conc}=C_{CH4e}-C_{CH4d}\ (1-(1/DF))$

Where:

$Density_{CH4}$=Density of methane is 18.89 g/ft³ at 68°F (20°C) and 760 mm Hg (101.3kPa) pressure.

CH_{4conc}=Methane concentration of the dilute exhaust corrected for background, in ppm.

C_{CH4e}=Methane concentration in the dilute exhaust, in ppm.

C_{CH4d}=Methane concentration in the dilution air, in ppm.

(F) $M_{CH3OH\ mode}$=Methanol emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH3OH\ mode}=(V_{mix})(Density_{CH3OH})\ (CH_3OH_{conc}/10^6)/V_f$

$CH3OH_{conc}=C_{CH3OHe}-C_{CH3OHd}(1-(1/DF))$

$C_{CH3OHe}=((3.817)\ (10^{-2})\ (T_{EM})(((C_{S1})(AV_{S1}))+(C_{S2})(AV_{S2})))/((P_B)(V_{EM}))$

$C_{CH3OHd}=((3.817)(10^{-2})(T_{DM})(((C_{D1})\ (AV_{D1}))+(C_{D2})(AV_{D2})))/((P_B)(V_{DM}))$

Where:

$Density_{CH3OH}$=Density of methanol is 37.71 g/ft³ (1.332 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3kPa) pressure.

$CH3OH_{conc}$=Methanol concentration of the dilute exhaust corrected for background, in ppm.

C_{CH3OHe}=Methanol concentration in the dilute exhaust, in ppm.

C^{CH3OHd}=Methanol concentration in the dilution air, in ppm.

T_{EM}=Temperature of methanol sample withdrawn from dilute exhaust, °R.

T_{DM}=Temperature of methanol sample withdrawn from dilution air, °R.

P_B=Barometric pressure during test, mm Hg.

V_{EM}=Volume of methanol sample withdrawn from dilute exhaust, ft³.

V_{DM}=Volume of methanol sample withdrawn from dilution air, ft³.

C_S=GC concentration of aqueous sample drawn from dilute exhaust, µg/ml.

C_D=GC concentration of aqueous sample drawn from dilution air, µg/ml.

A_{VS}=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml.

A_{VD}=Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml.

1=first impinger.

2=second impinger.

(G) $M_{C2H5OH\ mode}$=Ethanol emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH3CH2OH\ mode}=(V_{mix})(Density_{CH3CH2OH})\ ((CH_3CH_2OH_{conc}/10^6))/V_f$

$CH_3CH_2OH_{conc}=C_{CH3CH2OHe}-C_{CH3CH2OHd}(1-(1/DF))$

$C_{CH3CH2OHd}=((2.654)(10^{-2})(T_{DM})(((C_{D1})\ (AV_{D1}))+(C_{D2})(AV_{D2})))/((P_B)(V_{DM}))$

$C_{CH3CH2OHe}=((2.654)(10^{-2})(T_{EM})(((C_{S1})\ (AV_{S1}))+(C_{S2})(AV_{S2})))/((P_B)(V_{EM}))$

Where:

$Density_{C2H5OH}$=Density of ethanol is 54.23 g/ft³ (1.915 kg/m³), at 68°F (20°C) and 760 mm Hg (101.3kPa) pressure.

$CH_3CH_2OH_{conc}$=Ethanol concentration of the dilute exhaust corrected for background, in ppm.

$C_{CH3CH2OHe}$=Ethanol concentration in the dilute exhaust, in ppm.

$C_{CH3CH2OHd}$=Ethanol concentration in the dilution air, in ppm.

T_{EM}= Temperature of ethanol sample withdrawn from dilute exhaust, °R.

T_{DM}=Temperature of ethanol sample withdrawn from dilution air, °R.

P_B=Barometric pressure during test, mm Hg.

V_{EM}=Volume of ethanol sample withdrawn from dilute exhaust, ft³.

V_{DM}=Volume of ethanol sample withdrawn from dilution air, ft³.

C_S=GC concentration of aqueous sample drawn from dilute exhaust, µg/ml.

C_D=GC concentration of aqueous sample drawn from dilution air, µg/ml.

A_{VS}= Volume of absorbing reagent (deionized water) in impinger through which ethanol sample from dilute exhaust is drawn, ml.

A_{VD}=Volume of absorbing reagent (deionized water) in impinger through which ethanol sample from dilution air is drawn, ml.

1=first impinger.

2=second impinger.

(H) $M_{CH2O\ mode}$=Formaldehyde emissions corrected for background, in gram per hour by mode, are calculated using the following equations:

$M_{CH2O\ mode}=(V_{mix})(Density_{CH2O})\ ((CH_2O_{conc}/10^6)/V_f$

$CH2O_{conc}=C_{CH2Oe}-C_{CH2Od}(1-(1/DF))$

$C_{CH2Oe}=((4.069)(10^{-2})\{C_{FDE})(V_{AE})(Q)\ (T_{EF}))/((V_{SE})(P_B)$

$C_{CH2Od}=((4.069)(10^{-2})(C_{FDA})(V_{AA})\ (Q)(T_{DF}))/(V_{SA})(P_B)$

Where:

$Density_{CH2O}$=Density of formaldehyde is 35.36 g/ft³ (1.249 kg/m³), at 68 °F (20 °C) and 760 mmHg (101.3 kPa) pressure.

$CH2O_{conc}$=Formaldehyde concentration of the dilute exhaust corrected for background, ppm.

C_{CH2Oe}=Formaldehyde concentration in dilute exhaust, ppm.

C_{CH2Od}=Formaldehyde concentration in dilution air, ppm.

C_{FDE}=Concentration of DNPH derivative of formaldehyde from dilute exhaust sample in sampling solution, µg/ml.

V_{AE}=Volume of sampling solution for dilute exhaust formaldehyde sample, ml.

Q = Ratio of molecular weights of formaldehyde to its DNPH derivative = 0.1429.

T_{EF}=Temperature of formaldehyde sample withdrawn from dilute exhaust, °R.

V_{SE}=Volume of formaldehyde sample withdrawn from dilute exhaust, ft³.

P_B=Barometric pressure during test, mm Hg.

C_{FDA}=Concentration of DNPH derivative of formaldehyde from dilution air sample in sampling solution, µg/ml.

V_{AA}=Volume of sampling solution for dilution air formaldehyde sample, ml.

T_{DF}=Temperature of formaldehyde sample withdrawn from dilution air, °R.

V_{SA}=Volume of formaldehyde sample withdrawn from dilution air, ft³.

(I) $M_{CH3CHO\ mode}$=Acetaldehyde emissions corrected for background, in

grams per hour by mode, are calculated using the following equations:

$M_{CH3CHO\ mode} = (V_{mix})(Density_{CH3CHO})((CH_3CHO_{conc}/10^6)/V_f$

$CH3CHO_{conc} = C_{CH3CHOe} - C_{CH3CHOd}(1-(1/DF))$

$C_{CH3CHOe} = ((2.774)(10^{-2})(C_{ADE})(V_{AE})(Q)(T_{EF}))/((V_{SE})(P_B)$

$C_{CH3CHOd} = ((2.774)(10^{-2})(C_{ADA})(V_{AA})(Q)(T_{DF}))/(V_{SA})(P_B)$

Where:

$Density_{CH3CHO}$=Density of acetaldehyde is 51.88 g/ft³ (1.833 kg/m³), at 68 °F (20 °C) and 760 mmHg (101.3 kPa) pressure.

$CH3CHO_{conc}$=Acetaldehyde concentration of the dilute exhaust corrected for background, ppm.

$C_{CH3CHOe}$=Acetaldehyde concentration in dilute exhaust, ppm.

$C_{CH3CHOd}$=Acetaldehyde concentration in dilution air, ppm.

C_{ADE}=Concentration of DNPH derivative of acetaldehyde from dilute exhaust sample in sampling solution, µg/ml.

V_{AE}=Volume of sampling solution for dilute exhaust acetaldehyde sample, ml.

Q=Ratio of molecular weights of acetaldehyde to its DNPH derivative =0.182

T_{EF}=Temperature of acetaldehyde sample withdrawn from dilute exhaust, °R.

V_{SE}=Volume of acetaldehyde sample withdrawn from dilute exhaust, ft³.

P_B=Barometric pressure during test, mm Hg.

C_{ADA}Concentration of DNPH derivative of acetaldehyde from dilution air sample in sampling solution, µg/ml.

V_{AA}=Volume of sampling solution for dilution air acetaldehyde sample, ml.

TDF=Temperature of acetaldehyde sample withdrawn from dilution air, °R.

V_{SA}=Volume of acetaldehyde sample withdrawn from dilution air, ft³.

(J) $M_{NMHC\ mode}$=Nonmethane hydrocarbon emissions, in grams per hour by mode.

$M_{NMHC\ mode} = (V_{mix})(Density_{NMHC})((NMHC_{conc}/10^6))/V_f$

$NMHC_{conc} = NMHCe - (NMHC_d)(1-(1/DF))$

$NMHC_e = FID\ HC_e - (r_m)(C_{CH4e})$

$NMHC_d = FID\ HC_d - (r_m)(C_{CH4d})$

Where:

$Density_{NMHC}$=Density of nonmethane hydrocarbons=16.42 g/ft³ (0.5800 kg/m³) for # 1 petroleum diesel fuel, 16.27 g/ft³ (0.5746 kg/m³) for #2 diesel, and 16.33 for other fuels, assuming an average carbon to hydrogen ratio of 1:1.93 for #1 petroleum diesel fuel, 1:1.80 for #2 petroleum diesel fuel, and 1:1.85 for nonmethane hydrocarbons in other fuels at standard conditions.

$NMHC_{conc}$=Nonmethane hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent (i.e., equivalent propane × 3).

$NMHC_e$=Nonmethane hydrocarbon concentration of the dilute exhaust bag sample:

FID HC_e=Concentration of hydrocarbons in dilute exhaust as measured by the FID, ppm carbon equivalent.

rm=FID response to methane.

C_{CH4e}=Concentration of methane in dilute exhaust as determined from the dilute exhaust sample.

$NMHC_d$=Nonmethane hydrocarbon concentration of the dilution air:

FID HC_d=Concentration of hydrocarbons in dilute exhaust as measured by the FID, ppm carbon equivalent.

r_m=FID response to methane.

C_{CH4d}=Concentration of methane in dilute exhaust as determined from the dilute exhaust sample, ppm.

(4) Particulate exhaust emissions. The mass of particulate for a test mode determined from the following equations when a heat exchanger is used (i.e., no flow compensation), and when background filters are used to correct for background particulate levels:

$M_{PM\ mode}$=Particulate emissions, grams per hour by mode.

$M_{PM\ mode} = (WVol)\ (PM_{conc})\ (1+DF) = (V_{mix})\ (PM_{conc})/V_f$

$PM_{conc} = PM_e - PM_d\ (1-(1/DF))$

$PM_e = M_{PMe}/V_{sampe}/10^3$

$PM_d = M_{PMd}/V_{sampd}/10^3$

Where:

PM_{conc}=Particulate concentration of the diluted exhaust sample corrected for background, in g/ft³

M_{PMe}=Measured mass of particulate for the exhaust sample, in mg, which is the difference in filter mass before and after the test.

M_{PMd}=Measured mass of particulate for the dilution air sample, in mg, which is the difference in filter mass before and after the test.

V_{sampe}=Total wet volume of sample removed from the dilution tunnel for the exhaust particulate measurement, cubic feet at standard conditions.

V_{sampd}=Total wet volume of sample removed from the dilution tunnel for the dilution air particulate measurement, cubic feet at standard conditions.

DF=Dilution factor, which is the volumetric ratio of the dilution air to the raw exhaust sample, calculated as:

$$DF = \frac{WCO2 - WCO2_d}{WCO2_e - WCO2_d} - 1$$

(c) *Humidity calculations.* (1) The following abbreviations (and units) apply to paragraph (b) of this section:

BARO=barometric pressure (Pa).

H=specific humidity, (g H_2O/g of dry air).

K_H=conversion factor=0.6220 g H_2O/g dry air.

M_{air}=Molecular weight of air=28.9645.

M_{H2O}=Molecular weight of water=18.01534.

P_{DB}=Saturation vapor pressure of water at the dry bulb temperature (Pa).

P_{DP}=Saturation vapor pressure of water at the dewpoint temperature (Pa).

P_v=Partial pressure of water vapor (Pa).

P_{WB}=Saturation vapor pressure of water at the wet bulb temperature (Pa).

T_{DB}=Dry bulb temperature (Kelvin).

T_{WB}=Wet bulb temperature (Kelvin).

Y=Water-vapor volume concentration.

(2) The specific humidity on a dry basis of the intake air (H) is defined as:

$H = ((K_H)\ (P_v)/(BARO - P_v))$

(3) The partial pressure of water vapor may be determined using a dew point device. In that case:

$P_v = P_{DP}$

(4) The percent of relative humidity (RH) is defined as:

$RH = (P_v/P_{DB})100$

(5) The water-vapor volume concentration on a dry basis of the engine intake air (Y) is defined as:

$Y = ((H)(M_{air})/(M_{H2O}) = P_v/(BARO - P_v)$

(d) *NO_X correction factor.* (1) NO_X emission rates ($M_{NOx\ mode}$) shall be adjusted to account for the effects of humidity and temperature by multiplying each emission rate by K_{NOx}, which is calculated from the following equations:

$K_{NOx} = (K)(1+(0.25(\log K)^2)^{1/2})$

$K = (K_H)(K_T)$

$K_H = [C_1 + C_2(\exp((-0.0143)(10.714))]/[C_1 + C_2(\exp((-0.0143)(1000H))]$

$C_1 = -8.7 + 164.5\exp(-0.0218(A/F)_{wet})$

$C_2 = 130.7 + 3941\exp(-0.0248(A/F)_{wet})$

Where:

$(A/F)_{wet}$=Mass of moist air intake divided by mass of fuel intake.

$K_T = 1/[1-0.017(T_{30}-T_A)]$ for tests conducted at ambient temperatures below 30 °C.

K_T=1.00 for tests conducted at ambient temperatures at or above 30 °C.

T_{30}=The measured intake manifold air temperature in the locomotive when operated at 30°C (or 100°C, where intake manifold air temperature is not available).

T_A=The measured intake manifold air temperature in the locomotive as tested (or the ambient temperature (°C), where intake manifold air temperature is not available).

(e) *Other calculations.* Calculations other than those specified in this section may be used with the advance approval of the Administrator.

§ 92.133 Required information.

(a) The required test data shall be grouped into the following two general categories:

(1) *Pre-test data.* These data are general test data that must be recorded for each test. The data are of a more descriptive nature such as identification

of the test engine, test site number, etc. As such, these data can be recorded at any time within 24 hours of the test.

(2) *Test data.* These data are physical test data that must be recorded at the time of testing.

(b) When requested, data shall be supplied in the format specified by the Administrator.

(c) *Pre-test data.* The following shall be recorded, and reported to the Administrator for each test conducted for compliance with the provisions of this part:

(1) Engine family identification (including subfamily identification, such as for aftertreatment systems).

(2) Locomotive and engine identification, including model, manufacturer and/or remanufacturer, and identification number.

(3) Locomotive and engine parameters, including fuel type, recommended oil type, exhaust configuration and sizes, base injection (ignition) timing, operating temperature, advance/retard injection (ignition) timing controls, recommended start-up and warm-up procedures, alternator generator efficiency curve.

(4) Locomotive or engine and instrument operator(s).

(5) Number of hours of operation accumulated on the locomotive or engine prior to beginning the testing.

(6) Dates of most recent calibrations required by §§ 92.115–92.122.

(7) All pertinent instrument information such as tuning (as applicable), gain, serial numbers, detector number, calibration curve number, etc. As long as this information is traceable, it may be summarized by system or analyzer identification numbers.

(8) A description of the exhaust duct and sample probes, including dimensions and locations.

(d) Test data. The physical parameters necessary to compute the test results and ensure accuracy of the results shall be recorded for each test conducted for compliance with the provisions of this part. Additional test data may be recorded at the discretion of the manufacturer or remanufacturer. Extreme details of the test measurements such as analyzer chart deflections will generally not be required on a routine basis to be reported to the Administrator for each test, unless a dispute about the accuracy of the data arises. The following types of data shall be required to be reported to the Administrator. The applicable Application Format for Certification will specify the exact requirements which may change slightly from year to year with the addition or deletion of certain items.

(1) Date and time of day.

(2) Test number.

(3) Engine intake air and test cell (or ambient, as applicable) temperature.

(4) For each test point, the temperature of air entering the engine after compression and cooling in the charge air cooler(s). If testing is not performed on a locomotive, the corresponding temperatures when the engine is in operation in a locomotive at ambient conditions represented by the test.

(5) Barometric pressure. (A central laboratory barometer may be used: Provided, that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.)

(6) Engine intake and test cell dilution air humidity.

(7) Measured horsepower and engine speed for each test mode.

(8) Identification and specifications of test fuel used.

(9) Measured fuel consumption rate at maximum power.

(10) Temperature set point of the heated continuous analysis system components (if applicable).

(11) All measured flow rates, dilution factor, and fraction of exhaust diluted for diluted exhaust measurements (as applicable) for each test mode.

(12) Temperature of the dilute exhaust mixture at the inlet to the respective gas meter(s) or flow instrumentation used for particulate sampling.

(13) The maximum temperature of the dilute exhaust mixture immediately ahead of the particulate filter.

(14) Sample concentrations (background corrected as applicable) for HC, CO, CO_2, and NO_x (and methane, NMHC, alcohols and aldehydes, as applicable) for each test mode. This includes the continuous trace and the steady-state value (or integrated value where required).

(15) The stabilized pre-test weight and post-test weight of each particulate sample and back-up filter or pair of filters.

(16) Brake specific emissions (g/BHP-hr) for HC, CO, NO_x, particulate and, if applicable, CH3, NMHC, THCE, CH_3OH, CH3CH2OH, CH2O and CH3CHO for each test mode.

(17) The weighted brake specific emissions for HC, CO, NO_x and particulate (g/BHP-hr) for the total test for the duty-cycle(s) applicable to the locomotive.

(18) The smoke opacity for each test mode. This includes the continuous trace, the peak values and the steady-state value.

Subpart C—Certification Provisions

§ 92.201 Applicability.

The requirements of this subpart are applicable to manufacturers and remanufacturers of any locomotives and locomotive engines subject to the provisions of subpart A of this part.

§ 92.202 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.203 Application for certification.

(a) For each engine family that complies with all applicable standards and requirements, the manufacturer or remanufacturer must submit to the Administrator a completed application for a certificate of conformity.

(b) The application must be approved and signed by the authorized representative of the manufacturer or remanufacturer.

(c) The application will be updated and corrected by amendment as provided for in § 92.210 to accurately reflect the manufacturer's or remanufacturer's production.

(d) *Required content.* Each application must include the following information:

(1)(i) A description of the basic engine design including, but not limited to, the engine family specifications, the provisions of which are contained in § 92.208;

(ii)(A) For freshly manufactured locomotives, a description of the basic locomotive design;

(B) For freshly manufactured engines for use in remanufactured locomotives, a description of the locomotive designs in which the engines are to be used;

(C) For remanufactured locomotives, a description of the basic locomotive designs to which the remanufacture system will be applied;

(iii) A list of distinguishable configurations to be included in the engine family;

(2) An explanation of how the emission control system operates, including detailed descriptions of:

(i) All emission control system components;

(ii) Injection or ignition timing for each notch (i.e., degrees before or after top-dead-center), and any functional dependence of such timing on other operational parameters (e.g., engine coolant temperature);

(iii) Each auxiliary emission control device (AECD); and

(iv) All fuel system components to be installed on any production or test locomotive(s) or engine(s);

(3) A description of the test locomotive or engine;

(4) Special or alternate test procedures, if applicable;

(5) A description of the operating cycle and the period of operation necessary to accumulate service hours on the test locomotive or engine and stabilize emission levels;

(6) A description of all adjustable operating parameters (including, but not limited to, injection timing and fuel rate), including the following:

(i) The nominal or recommended setting and the associated production tolerances;

(ii) The intended adjustable range, and the physically adjustable range;

(iii) The limits or stops used to limit adjustable ranges;

(iv) Production tolerances of the limits or stops used to establish each physically adjustable range; and

(v) Information relating to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are the most effective means possible of preventing adjustment of parameters to settings outside the manufacturer's or remanufacturer's specified adjustable ranges on in-use engines;

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart D of this part;

(8) Projected U.S. production information for each configuration;

(9) A description of the test equipment and fuel proposed to be used;

(10) All test data obtained by the manufacturer or remanufacturer on each test engine or locomotive;

(11) The intended useful life period for the engine family, in accordance with § 92.9(a);

(12) The intended deterioration factors for the engine family, in accordance with § 92.9(b)(2);

(13) An unconditional statement certifying that all locomotives and engines included the engine family comply with all requirements of this part and the Clean Air Act.

(e) At the Administrator's request, the manufacturer or remanufacturer must supply such additional information as may be required to evaluate the application.

(f)(1) If the manufacturer or remanufacturer, submits some or all of the information specified in paragraph (d) of this section in advance of its full application for certification, the Administrator shall review the information and make the determinations required in § 92.208(d) within 90 days of the manufacturer's or remanufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer or remanufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's or remanufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer or remanufacturer submits information under paragraph (f)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer or remanufacturer.

(g)(1) The Administrator may modify the information submission requirements of paragraph (d) of this section, provided that all of the information specified therein is maintained by the manufacturer or remanufacturer as required by § 92.215, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph (g), § 92.215 includes all information specified in paragraph (d) of this section whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review a manufacturer's or remanufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's or remanufacturer's facility or at another facility designated by the Administrator.

§ 92.204 Designation of engine families.

This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers and remanufacturers shall divide their locomotives and locomotive engines into groupings of locomotives and locomotive engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Tier 1 and Tier 2 locomotives and locomotive engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The bore and stroke dimensions;

(4) The approximate intake and exhaust event timing and duration (valve or port);

(5) The location of the intake and exhaust valves (or ports);

(6) The size of the intake and exhaust valves (or ports);

(7) The overall injection, or as appropriate ignition, timing characteristics (i.e., the deviation of the timing curves from the optimal fuel economy timing curve must be similar in degree);

(8) The combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(9) The location of the piston rings on the piston;

(10) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(11) The turbocharger or supercharger general performance characteristics (e.g., approximate boost pressure, approximate response time, approximate size relative to engine displacement);

(12) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(13) The intake manifold induction port size and configuration;

(14) The type of fuel and fuel system configuration;

(15) The configuration of the fuel injectors and approximate injection pressure;

(16) The type of fuel injection system controls (i.e., mechanical or electronic);

(17) The type of smoke control system;

(18) The exhaust manifold port size and configuration; and

(19) The type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(c) For Tier 0 locomotives and locomotive engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The approximate bore and stroke dimensions;

(4) The approximate location of the intake and exhaust valves (or ports);

(5) The combustion chamber general configuration and the approximate

surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(6) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(7) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(8) The type of fuel and general fuel system configuration;

(9) The general configuration of the fuel injectors and approximate injection pressure; and

(10) The fuel injection system control type (electronic or mechanical).

(d) Upon request by the manufacturer or remanufacturer, locomotives or locomotive engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer or remanufacturer believes supports the addition of these different engine families. For the purposes of determining whether an engine family is a small engine family in § 92.603(a)(2), EPA will consider the number of locomotives or locomotive engines that could have been classed together under paragraph (b) or (c) of this section, instead of the number of locomotives or locomotive engines that are included in a subdivision allowed by this paragraph (d).

(e) Upon request by the manufacturer or remanufacturer, the Administrator may allow locomotives or locomotive engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer or remanufacturer demonstrates that similar emission characteristics will occur. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

§ 92.205 Prohibited controls, adjustable parameters.

(a) Any system installed on, or incorporated in, a new locomotive or new locomotive engine to enable such locomotive or locomotive engine to conform to standards contained in this subpart:

(1) Shall not in its operation or function cause significant (as determined by the Administrator) emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such locomotive, or locomotive engine, without such system, except as specifically permitted by regulation;

(2) Shall not in its operation, function or malfunction result in any unsafe condition endangering the locomotive, its operators, riders or property on a train, or persons or property in close proximity to the locomotive; and

(3) Shall function during all in-use operation except as otherwise allowed by this part.

(b) In specifying the adjustable range of each adjustable parameter on a new locomotive or new locomotive engine, the manufacturer or remanufacturer, shall:

(1) Ensure that safe locomotive operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the physical range of adjustability to that which is necessary for proper operation of the locomotive or locomotive engine.

§ 92.206 Required information.

(a) The manufacturer or remanufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: Provided, however, that if requested by the manufacturer or remanufacturer, the Administrator may waive any requirement of this section for testing of locomotives, or locomotive engines, for which the required emission data are otherwise available.

(b) Exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with good engineering practice to assure that the locomotives or locomotive engines covered by a certificate issued under § 92.208 will meet the emission standards in § 92.8, in actual use for the useful life of the locomotive or locomotive engine.

(c) Emission data, including exhaust methane data in the case of locomotives or locomotive engines subject to a non-methane hydrocarbon standard, on such locomotives or locomotive engines tested in accordance with applicable test procedures of subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request of the manufacturer or remanufacturer, allow the manufacturer or remanufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine or locomotive will conform with the applicable emission standards of § 92.8.

(d) A statement that the locomotives and locomotive engines, for which certification is requested conform to the requirements in § 92.7, and that the descriptions of tests performed to ascertain compliance with the general standards in § 92.7, and the data derived from such tests, are available to the Administrator upon request.

(e) A statement that the locomotive, or locomotive engine, with respect to which data are submitted to demonstrate compliance with the applicable standards of this subpart, is in all material respects as described in the manufacturer's or remanufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test locomotive, or test engine, was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the locomotive, or engine, does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 92.208(c)(3)(i).

§ 92.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer or remanufacturer, establish special test procedures other than those set forth in this part, for any locomotive or locomotive engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in subpart B of this part.

(b) *Use of alternate test procedures by manufacturer or remanufacturer.* (1) A manufacturer or remanufacturer may elect to use an alternate test procedure provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's or remanufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures which do not correlate with data generated under the specified procedures.

§ 92.208 Certification.

(a) Paragraph (a) of this section applies to manufacturers of new locomotives and new locomotive engines. If, after a review of the application for certification, test reports and data acquired from a freshly manufactured locomotive or locomotive engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year in which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to assure that the production locomotives or engines covered by the certificate will meet the requirements of the Act and of this part.

(b) This paragraph (b) applies to remanufacturers of locomotives and locomotive engines. If, after a review of the application for certification, test reports and data acquired from a remanufactured locomotive or locomotive engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the engine family meets the requirements of the Act and of this subpart, he/she will issue a certificate of conformity with respect to such engine family except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year in which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to assure that the production locomotives or engines covered by the certificate will meet the requirements of the Act and of this part.

(c) This paragraph (c) applies to manufacturers and remanufacturers of locomotives and locomotive engines.

(1) The manufacturer or remanufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all locomotives or locomotive engines of the engine family.

(3) Notwithstanding the fact that any locomotive(s) or locomotive engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such locomotive(s) or locomotive engine(s) if:

(i) The manufacturer or remanufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer or remanufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such locomotive or locomotive engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 92.215 to any facility or portion thereof which contains any of the following:

(A) A locomotive or locomotive engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any locomotive or locomotive engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production locomotive or production locomotive engine which is or will be claimed by the manufacturer or remanufacturer to be covered by the certificate; or

(D) Any step in the construction of a locomotive or locomotive engine, where such step may reasonably be expected to have an effect on emissions; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D).

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 92.215).

(4) In any case in which a manufacturer or remanufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(5) In any case in which certification of a locomotive or locomotive engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer or remanufacturer involved reasonable evidence that a violation of § 92.215 in fact occurred, the manufacturer or remanufacturer, if it wishes to contend that, even though the violation occurred, the locomotive or locomotive engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 92.216; and

(ii) Extend no further than to forbid the introduction into commerce of locomotives or locomotive engines previously covered by the certification which are still in the hands of the manufacturer or remanufacturer, except in cases of such fraud or other misconduct that makes the certification invalid *ab initio*.

(7) The manufacturer or remanufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 92.216. The request shall be in writing, signed by an authorized representative of the manufacturer or remanufacturer as applicable, and shall include a statement specifying the manufacturer's or remanufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify:

(1) A broader range of adjustability than recommended by the manufacturer or remanufacturer for those locomotive

or engine parameters which are to be subject to adjustment, if the Administrator determines that it will not be practical to keep the parameter adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the locomotives and locomotive engines in the engine family, as defined in § 92.2, is longer than the period specified by the manufacturer or remanufacturer; and/or

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer or remanufacturer do not meet the requirements of § 92.9(b)(2)(iv).

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer or remanufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer or remanufacturer as applicable, and shall include a statement specifying the manufacturer's or remanufacturer'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, the manufacturer or remanufacturer shall be provided with a hearing in accordance with § 92.216 with respect to such issue.

§ 92.209 Certification with multiple manufacturers or remanufacturers.

(a) Where there are multiple persons meeting the definition of manufacturer or remanufacturer, each such person must comply with the requirements of this part that apply to manufacturers or remanufacturers. However, if one person complies with a requirement, then all such persons will be deemed to have complied with that specific requirement.

(b) Where more than one entity meets the definition of manufacturer or remanufacturer for a particular locomotive or locomotive engine, and any one of the manufacturers or remanufacturers obtains a certificate of conformity covering such locomotive or locomotive engine, the requirements of subparts C, D, F, and G of this part shall apply to the manufacturer or remanufacturer that obtains the certificate of conformity. Other manufacturers or remanufacturers are required to comply with the requirements of subparts C, D, F, and G of this part only when notified by the Administrator. Such notification by the Administrator shall specify a reasonable time period in which the manufacturer or remanufacturer shall comply with the requirements identified in the notice.

§ 92.210 Amending the application and certificate of conformity.

(a) The manufacturer or remanufacturer of locomotives or locomotive engines must notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification must include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer or remanufacturer shall make said changes or produce said locomotives or engines prior to receiving approval from EPA.

(b) A manufacturer's or remanufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the locomotive or engine to be added;

(2) Engineering evaluations or data showing that locomotives or engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's or remanufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the locomotives or engines changed or added which would have been required if the locomotives or engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer or remanufacturer to perform tests on the locomotive or engine representing the locomotive or engine to be added or changed.

(d) *Decision by Administrator.* (1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new locomotive(s) or engine(s) meets the requirements of this subpart and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed or new locomotive(s) or engine(s) does not meet the requirements of this subpart and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer or remanufacturer of the decision not to amend the certificate. The manufacturer or remanufacturer may request a hearing on a denial.

(e) A manufacturer or remanufacturer may make changes in or additions to production locomotives or engines concurrently with the notification to the Administrator as required by paragraph (a) of this section, if the manufacturer or remanufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer or remanufacturer must supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all affected locomotives and engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer or remanufacturer must provide required test data within 30 days or cease production of the affected locomotives or engines.

(3) If the Administrator determines that the affected locomotives or engines do not meet applicable requirements, the Administrator will notify the manufacturer or remanufacturer to cease production of the affected locomotives or engines and to recall and correct at no expense to the owner all affected locomotives or engines previously produced.

(4) Election to produce locomotives or engines under this paragraph will be deemed to be a consent to recall all locomotives or engines which the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 92.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer or remanufacturer shall furnish or cause to be furnished to the ultimate purchaser or owner of each new locomotive, or new locomotive engine, subject to the standards prescribed in § 92.8, written instructions for the proper maintenance and use of the locomotive, or locomotive engine, as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which would demonstrate that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer or remanufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any locomotive or locomotive engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such locomotive or locomotive engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer or remanufacturer has a commercial relationship and service performed by independent locomotive or locomotive engine repair facilities which such manufacturer or remanufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer or remanufacturer satisfies the Administrator that the locomotive or locomotive engine will function properly only if the component or service so identified is used in connection with such locomotive or locomotive engine; and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer or remanufacturer shall provide to the Administrator, no later than the time of the submission required by § 92.203, a copy of the emission-related maintenance instructions which the manufacturer or remanufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to assure the proper functioning of the locomotive's, or locomotive engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to assure the proper functioning of the emission control systems, he/she may disapprove the application for certification, or may require that the manufacturer or remanufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of § 92.210.

§ 92.212 Labeling.

(a) *General requirements.* Each new locomotive and new locomotive engine, subject to the emission standards of this part and covered by a certificate of conformity under § 92.208, shall be labeled by the manufacturer or remanufacturer in the manner described in this section at the time of manufacture or remanufacture.

(b) *Locomotive labels.* (1) Locomotive labels meeting the specifications of paragraph (b)(2) of this section shall be applied by:

(i) The manufacturer at the point of original manufacture; and

(ii) The remanufacturer at the point of original remanufacture; and

(iii) Any remanufacturer certifying a locomotive or locomotive engine to an FEL different from the last FEL or standard to which the locomotive was previously certified.

(2)(i) Locomotive labels shall be permanent and legible and shall be affixed to the locomotive in a position in which it will remain readily visible.

(ii) The label shall be attached to a locomotive part necessary for normal operation and not normally requiring replacement during the service life of the locomotive.

(iii) The label shall be affixed by the manufacturer or remanufacturer, 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 locomotive.

(iv) The label may be made up of more than one piece, provided that all pieces are permanently attached to the same locomotive part.

(v) 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:

(A) The label heading: Original Locomotive Emission Control Information.

(B) Full corporate name and trademark of the manufacturer or remanufacturer.

(C) Engine family and configuration identification.

(D) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to locomotives and locomotive engines, as applicable:

(*1*) This locomotive conforms to U.S. EPA regulations applicable to locomotives originally manufactured prior to January 1, 2002; or

(*2*) This locomotive conforms to U.S. EPA regulations applicable to locomotives originally manufactured on or after January 1, 2002, but before January 1, 2005; or

(*3*) This locomotive conforms to U.S. EPA regulations applicable to locomotives originally manufactured on or after January 1, 2005.

(E) Date of locomotive original manufacture.

(F) The useful life of the locomotive.

(G) The standards and/or FELS to which the locomotive was certified.

(c) *Engine labels.* (1) Engine labels meeting the specifications of paragraph (c)(2) of this section shall be applied by:

(i) Every manufacturer at the point of original manufacture; and

(ii) Every remanufacturer at the point of remanufacture.

(2)(i) Engine labels shall be permanent and legible and shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the locomotive.

(ii) The label shall be attached to an engine part necessary for normal operation and not normally requiring replacement during the useful life of the locomotive.

(iii) The label shall be affixed by the manufacturer or remanufacturer, 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 engine.

(iv) The label may be made up of more than one piece, provided that all pieces are permanently attached to the same engine part.

(v) 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:

(A) The label heading: Locomotive Emission Control Information.

(B) Full corporate name and trademark of the manufacturer or remanufacturer.

(C) Engine family and configuration identification.

(D) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to locomotives and locomotive engines, as applicable:

(*1*) This locomotive and locomotive engine conform to U.S. EPA regulations applicable to locomotives and locomotive engines originally manufactured prior to January 1, 2002; or

(*2*) This locomotive and locomotive engine conform to U.S. EPA regulations applicable to locomotives and locomotive engines originally manufactured on or after January 1, 2002, and remanufactured after January 1, 2005; or

(*3*) This locomotive and locomotive engine conform to U.S. EPA regulations applicable to locomotives and locomotive engines originally manufactured on or after January 1, 2005.

(E) The useful life of the locomotive or locomotive engine.

(F) The standards and/or FELS to which the locomotive or locomotive engine was certified.

(G) Engine tune-up specifications and adjustments, as recommended by the manufacturer or remanufacturer, in accordance with the applicable emission standards, including but not limited to idle speed(s), injection timing or ignition timing (as applicable), valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer or remanufacturer.

(d) The provisions of this section shall not prevent a manufacturer or remanufacturer from also providing on the label any other information that such manufacturer or remanufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the locomotive or engine.

§ 92.213 Submission of locomotive and engine identification numbers.

(a) Upon request of the Administrator, the manufacturer or remanufacturer of any locomotive or locomotive engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by locomotive and/or engine identification number, the locomotives or engines covered by the certificate of conformity.

(b) The manufacturer or remanufacturer of any locomotives or locomotive engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any locomotive or engine identification coding system in sufficient detail to enable the Administrator to identify those locomotives or engines which are covered by a certificate of conformity.

§ 92.214 Production locomotives and engines.

Any manufacturer or remanufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production locomotives or locomotive engines, as specified by the Administrator. The maximum number of locomotives or locomotive engines that may be supplied to the Administrator is five per model year. The locomotives or locomotive engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production locomotives or engines available for sale, or use by railroads, under the certificate. These locomotives or engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 92.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer or remanufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) *General records.* The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification locomotives or certification locomotive engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on or incorporated in each certification locomotive or certification locomotive engine.

(iii) A description of all procedures used to test each such certification locomotive or certification locomotive engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) *Individual records.* (i) A brief history of each locomotive or locomotive engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine or in a certification locomotive, a description of the process by which the engine was selected and of the modifications made. In the case where the certification locomotive or the engine for a certification locomotive is not derived from a current production engine, a general description of the buildup of the engine (e.g., whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components (carburetor, fuel injection components), ignition system components, intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification locomotive or certification locomotive engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, exhaust smoke control system components or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production locomotives or locomotive engines and that either: all components and/or locomotive or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such locomotives or engines are reasonably likely to be implemented for production locomotives or engines; or that they are as close as practicable to planned construction and assembly processed.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of miles or megawatt-hours accumulated on the locomotive or the number of megawatt-hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the locomotive or engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as locomotive accidents or accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in

paragraph (a)(2)(i)(A) of this section occurred with respect to the certification locomotive or engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer or remanufacturer for a period of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer or remanufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer or remanufacturer: *Provided*, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer or remanufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer or remanufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for a locomotive or engine family for which the manufacturer or remanufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer or remanufacturer of any locomotive or locomotive engine subject to any of the standards prescribed in this subpart shall submit to the Administrator, at the time of issuance by the manufacturer or remanufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such locomotive or engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer or remanufacturer, for use by other manufacturers or remanufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer or remanufacturer participating in averaging, banking and trading program of subpart D of this part must comply with the maintenance of records requirements of § 92.308.

(d)(1) Any manufacturer or remanufacturer who has applied for certification of a new locomotive or new locomotive engine subject to certification test under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any locomotive or locomotive engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such a locomotive or engine into a certification locomotive or certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the above is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring locomotive or engine preconditioning, emissions tests, mileage (or service) accumulation, maintenance, and locomotive or engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in Subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification locomotive, or certification locomotive engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production locomotives, or production locomotive engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those locomotives, or engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer or remanufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) 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 application for certification or used for certification testing into production locomotives or production engines is located or carried on;

(ii) Any facility where any locomotives or locomotive engines, to be introduced into commerce are manufactured or remanufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture or remanufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such locomotive(s) or locomotive engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. 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.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of locomotives, remanufacturing systems, or locomotive engines, or the installation of locomotive engines or remanufacturing systems, whether or not the manufacturer or remanufactuer owns or controls the facility in question and applies both to domestic and to foreign manufacturers or remanufacturers 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 do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a locomotive or locomotive engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer or remanufacturer to locate its testing and manufacturing and/or remanufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) Where locomotive, 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.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) 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 locomotive (or engine) manufacture, remanufacture, or assembly is being carried out in a facility.

(iv) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any locomotive (or engine) which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer or remanufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer 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 or remanufacturer. Any such employee who has been instructed by the manufacturer or remanufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer or remanufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity ab initio for locomotives or locomotive engines introduced into commerce if the manufacturer or remanufacturer (or contractor for the manufacturer or remanufacturer, if applicable) fails to comply with any provision of this section.

§ 92.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 92.210 or § 92.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(4) In the case of any hearing requested pursuant to § 92.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she 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 his/her 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 under § 92.210 or § 92.208 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/her discretion, may arrange for a prehearing conference at a time and place specified by him/her 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 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 him/her.

(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 30 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/she 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.

Subpart D—Certification Averaging, Banking, and Trading Provisions

§ 92.301 Applicability.

Locomotive engine families subject to the provisions of subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart. The provisions of this subpart apply to manufacturers and remanufacturers of new locomotives and new locomotive engines manufactured or remanufactured in the 1999 model year or later.

§ 92.302 Definitions.

The definitions of subpart A of this part apply to this subpart. The following definitions also apply.

Applicable standard means a standard that would have otherwise been applicable had the locomotive or locomotive engine not been certified under this subpart to an FEL different than that standard.

Broker means any entity that facilitates a trade between a buyer and seller.

Buyer means the entity that receives credits as a result of trade or transfer.

Reserved credits means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

Seller means the entity that provides credits during a trade or transfer.

Transfer means to convey control of credits generated from an individual locomotive to the purchaser, owner or operator of the locomotive at the time of manufacture or remanufacture; or to convey control of previously generated credits from the purchaser, owner or operator of an individual locomotive to the manufacturer or remanufacturer at the time of manufacture or remanufacture.

§ 92.303 General provisions.

(a) Participation in the averaging, banking and trading program is voluntary. A manufacturer or remanufacturer may choose to involve some or all of its families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for NO_x and PM emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking and trading program is available for meeting the HC, CO, or smoke emission standards of this part.

(c) Locomotives and locomotive engines may not participate in the certification averaging, banking, and trading program if they are exported. Only locomotive and locomotive engines certified under this part are eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer or remanufacturer for use by that same manufacturer or remanufacturer in the same calendar year. A manufacturer or remanufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer or remanufacturer in a given calendar year for use in a subsequent model year. A manufacturer or remanufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's or remanufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new locomotives and new locomotive engines under this part. Only banked credits may be traded; reserved credits may not be traded.

(g) Credit transfer involves the conveying of control over credits, as defined in § 92.302. Transferred credits can be used in averaging or in subsequent transfers. Transferred credits may also be reserved for later banking. Transferred credits may not be traded unless they have been previously banked.

§ 92.304 Compliance requirements.

(a) Manufacturers or remanufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer or remanufacturer, subject to the upper limits described in paragraph (k) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable NO_x and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer or remanufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's or remanufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 92.305 and reported under § 92.309.

(c) Manufacturers and remanufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, trading or transfer, subject to the restrictions described in this subpart.

(d) Manufacturers and remanufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, trade, or transfer, or a combination thereof.

(e) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL

(f) If an FEL is changed after initial certification in any given model year, the manufacturer/remanufacturer must conduct production line testing to verify that the emission levels are achieved.

(g) Manufacturers and remanufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers and remanufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine family(ies) will be in violation of the conditions of the certificate of conformity for such engine family(ies). The certificates of conformity may be voided *ab initio* for those engine families.

(h) In the event of a negative credit balance resulting from a credit trade or transfer, both the buyer(s) and the seller(s) are liable, except in cases

involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio*.

(1) Where a buyer of credits is not responsible for causing the negative credit balance, it is only liable to supply additional credits equivalent to any amount of invalid credits that it used.

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 92.309(g)(3).

(i) Averaging sets. This subpart includes separate programs for compliance with each type of cycle-weighted standards in § 92.8 (i.e., line-haul and switch). Credits generated over the line-haul duty-cycle may not be used for compliance with the switch duty-cycle, and credits generated over the switch duty-cycle may not be used for compliance with the line-haul duty-cycle.

(j) Cross tier credit exchanges. Cross tier credit exchanges for NO_X and PM emission credits may be exchanged between and among Tier 0, Tier 1, and Tier 2 engine families with the following exceptions:

(1) For 2005 and 2006 model year freshly manufactured locomotives, manufacturers may use PM credits for all of their freshly manufactured engine families. Manufacturers may use NO_X credits only for engine families that are projected to represent 75 percent or less of their total projected annual production of freshly manufactured locomotives. The remainder must comply with the Tier 2 NO_X emission standards without the use of credits.

(2) For 2007 and later model year freshly manufactured locomotives, manufacturers may use PM credits for all of their freshly manufactured engine families. Manufacturers may use NO_X credits only for engine families that are projected to represent 50 percent or less of their total projected annual production of freshly manufactured locomotives. The remainder must comply with the Tier 2 NO_X emission standards without the use of credits.

(3) Credits generated from remanufactured locomotives prior to January 1, 2002 and which are banked may only be used for compliance with the Tier 1 or later emission standards.

(k) Upper limits. The FELs for NO_X and PM for new locomotives and new locomotive engines certified to the Tier 1 and Tier 2 standards may not exceed the following values:

(1) Tier 1: the Tier 0 standards.

(2) Tier 2: the Tier 1 standards, except as noted in paragraph (j) of this section.

(l) Credit life shall be unlimited.

(m) Credits may be generated by any certifying manufacturer or remanufacturer and may be held by any of the following entities:

(1) Locomotive or locomotive engine manufacturers;

(2) Locomotive or locomotive engine remanufacturers;

(3) Locomotive or locomotive engine owners;

(4) Locomotive or locomotive engine operators; or

(5) Other entities after notification to EPA.

(n)(1) All locomotives that are certified to an FEL that is different from the emission standard that would otherwise apply to the locomotive or locomotive engine are required to comply with that FEL for the remainder of their service lives, except as allowed by § 92.9(a)(4)(iii) and this subpart.

(2) Manufacturers shall notify the purchaser of any locomotive engine that is certified to an FEL that is different from the emission standard that would otherwise apply that the locomotive or locomotive engine is required to comply with that FEL for the remainder of its service life.

(3) Remanufacturers shall notify the owner of any locomotive or locomotive engine that is certified to an FEL that is different from the emission standard that would otherwise apply that the locomotive (or the locomotive in which the engine is used) is required to comply with that FEL for the remainder of its service life.

§ 92.305 Credit generation and use calculation.

(a) For each participating engine family, NO_X and PM emission credits (positive or negative) are to be calculated according to the following equation and rounded in accordance with ASTM E29–93a, to the nearest Megagram (Mg). Consistent units are to be used throughout the calculation.

(1) When useful life is expressed in terms of megawatt-hrs:

Credits for each engine family are calculated as: Emission credits=(Std − FEL) × (UL) × (Production) × (Fp) × (10^{-3} kW-Mg/MW-g).

(2) Where:

(i) Std=the applicable locomotive and locomotive engine NO_X and/or PM emission standard in grams per kilowatt-hour (exceptions: Std=0.43 g/kW-hr, for Tier 0 and Tier 1 PM line-haul credits; Std=0.59 g/kW-hr, for Tier 0 and Tier 1 PM switch credits; and Std=previous FEL in g/kW-hr, for locomotives that were certified to an FEL other than the standard during the previous useful life).

(ii) FEL=the family emission limit for the engine family in grams per kilowatt-hour. For Tier 1 and Tier 2 engine families, the FEL may not exceed the limit established in § 92.304(k) for each pollutant.

(iii) UL=the sales weighted average useful life in megawatt-hours, based on the sales weighted average horsepower of the engine family (or the subset of the engine family for which credits are being calculated), as specified in the application for certification.

(iv) Production=the number of locomotives or locomotive engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of locomotives or locomotive engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.

(v) F_p=the proration factor as determined in paragraph (c) of this section.

(b) When useful life is expressed in terms of miles or years, the useful life in terms of megawatt hours (UL) shall be calculated by dividing the useful life in miles by 100,000, and multiplying by the sales weighted average horsepower of the engine family. Credits are calculated using this UL value in the equations of paragraph (a) of this section.

(c) The proration factor is an estimate of the fraction of a locomotive's service life that remains as a function of age.

(1) The locomotive's age is the length of time in years from the date of original manufacture to the date at which the remanufacture (for which credits are being calculated) is completed, rounded to the next higher year.

(2) The proration factors for ages 1 through 32 are specified in Table D305–1 of this section. For locomotives or locomotive engines more than 32 years old, the proration factor for 32 year old locomotives shall be used.

(3) For replacement or repower engines, the proration factor is based on the age of the locomotive chassis, not the age of the engine.

Table to § 92.305

TABLE D305–1.—PRORATION FACTOR

Age	F_p	Age	F_p
1	0.964	17	0.452
2	0.929	18	0.429
3	0.893	19	0.405
4	0.857	20	0.381
5	0.821	21	0.357
6	0.786	22	0.333
7	0.750	23	0.310
8	0.714	24	0.286

TABLE D305–1.—PRORATION FACTOR—Continued

Age	F_p	Age	F_p
9	0.679	25	0.268
10	0.643	26	0.250
11	0.607	27	0.232
12	0.571	28	0.214
13	0.548	29	0.196
14	0.524	30	0.179
15	0.500	31	0.161
16	0.476	32	0.143

§ 92.306 Certification.

(a) In the application for certification a manufacturer or remanufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and/or trading programs. Separate declarations are required for each program (line-haul and switch) and for each pollutant (NO_x and PM).

(2) Declare duty-cycle FELs for each engine family participating in certification averaging, banking, and/or trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FEL exceed the upper limit prescribed in § 92.304(k).

(3) Conduct and submit detailed calculations of projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in § 92.305 and the applicable values of the terms in the equation for the specific family.

(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family, remanufacturer/engine family, or transfer) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically where the quarterly projected credits will be applied (manufacturer/engine family or remanufacturer/engine family, reserved or transfer).

(4) Submit a statement that the locomotives or locomotive engines for which certification is requested will not, to the best of the manufacturer's or remanufacturer's belief, cause the manufacturer or remanufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's or remanufacturer's engine families participating in the averaging, banking, and trading program.

(b) Based on this information, each manufacturer's certification application must demonstrate:

(1) That at the end of model year production, each engine family has a net emissions balance equal to or greater than zero for any pollutant and program for which participation in certification under averaging, banking, and/or trading is being sought. The equation in section § 92.305 shall be used in this calculation for each engine family.

(2) That the manufacturer or remanufacturer will obtain sufficient credits to be used to comply with the emission standard for any engine family with an FEL that exceeds the applicable emission standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, for each engine family involved the manufacturer or remanufacturer must identify specifically the source of the credits being used (manufacturer/engine family, or remanufacturer/engine family, or transfer). All such reports shall include all credits involved in certification averaging, banking, or trading.

(3) In cases where credits are being generated/supplied, each engine family must indicate specifically the designated use of the credits involved (manufacturer/remanufacturer and engine family, reserved or transfer). All such reports shall include all credits involved in certification averaging, banking, or trading.

(c) Manufacturers and remanufacturers must monitor projected versus actual production throughout the model year to ensure that compliance with emission standards is achieved at the end of the model year.

(d) At the end of the model year, the manufacturer or remanufacturer must provide the end-of-year reports required under § 92.309.

(1) Projected credits based on the information supplied in the certification application may be used to obtain a certificate of conformity. However, any such projected credits must be validated based on review of the end of model year reports and may be revoked at a later time based on follow-up audits or any other verification measure deemed appropriate by the Administrator.

(2) Compliance for engine families using averaging, banking, or trading will be determined at the end of the model year. Manufacturers and remanufacturers that have certified engine families with credit balances for NO_x and/or PM that do not equal or exceed zero shall be in violation of the conditions of the certificate of conformity for such engine families. The certificate of conformity may be voided *ab initio* for those engine families.

(e) Other conditions of certification.

(1) All certificates issued are conditional upon compliance by the manufacturer or remanufacturer with the provisions of this subpart both during and after the calendar year of production.

(2) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(3) The manufacturer or remanufacturer (as applicable) bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

§ 92.307 Labeling.

For all locomotives and locomotive engines included in the certification averaging, banking, and trading program, the FEL to which the locomotive or locomotive engine is certified must be included on the label required in § 92.212. This label must include the notification specified in § 92.304(n).

§ 92.308 Maintenance of records.

(a) The manufacturer or remanufacturer of any locomotive or locomotive engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such locomotive or locomotive engine produced:

(1) EPA engine family and configuration;

(2) Engine identification number;

(3) Engine calendar year and build date;

(4) Rated horsepower;

(5) Purchaser and destination or owner; and

(6) Assembly plant.

(b) The manufacturer or remanufacturer of any engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) Model year and EPA engine family;

(2) Family Emission Limit (FEL);

(3) Rated horsepower for each configuration;

(4) Projected applicable production/sales volume for the calendar year;

(5) Actual applicable production/sales volume for the calendar year; and

(6) Useful life.

(c) Any manufacturer or remanufacturer producing an engine family participating in trading or transfer of credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The model year and engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 92.305;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(d) The manufacturer or remanufacturer must retain all records required to be maintained under this section for a period of 8 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's or remanufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer or remanufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer or remanufacturer must submit to the Administrator the information that the manufacturer or remanufacturer is required to retain.

(g) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer or remanufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 92.309 Reports.

(a) Manufacturer or remanufacturers must submit the certification information as required under § 92.306, and end-of-year reports each year as part of their participation in certification averaging, banking, and trading programs. All entities involved in credit trades or transfers must submit quarterly reports as specified in paragraph (b) of this section.

(b) Quarterly reports. (1) Those holding or receiving transferred credits as allowed in § 92.303(m) must submit quarterly reports of their holdings or receipts when credits are gained or lost.

(2) The reports shall include the source or recipient of the credits the amount of credits involved plus remaining balances, details regarding the pollutant, duty-cycle, and model year/Tier as well as the information prescribed in § 92.308(c). Copies of contracts related to credit trading or transfer must be included or supplied by the buyer, seller, and broker, as applicable.

(c) End-of-year reports must include the information prescribed in § 92.308(b). The report shall include a calculation of credit balances for each family to show that the summation of the manufacturer's or remanufacturer's use of credits results in a credit balance equal to or greater than zero. The report shall be consistent in detail with the information submitted under § 92.306 and show how credit surpluses were dispersed and how credit shortfalls were met on a family specific basis. The end-of-year report shall incorporate any information reflected in previous quarterly reports.

(d) The applicable production/sales volume for quarterly and end-of-year reports must be based on the location of either the point of first retail sale by the manufacturer or remanufacturer or the point at which the locomotive is placed into service, whichever occurs first. This is called the final product purchase location.

(e) Each quarterly and end-of-year report submitted shall include a statement certifying to the accuracy and authenticity of the material reported therein.

(f) Requirements for submission. (1) Quarterly reports must be submitted within 90 days of the end of the calendar quarter to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(2) End-of-year reports must be submitted within 120 days of the end of the calendar year to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(3) Failure by a manufacturer or a remanufacturer participating in the averaging, banking, or trading program to submit any quarterly or end-of-year reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each locomotive or locomotive engine.

(4) A manufacturer or remanufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (120 days after the end of the calendar year) may not use or trade the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(g) Reporting errors. (1) Errors discovered by EPA or the manufacturer or the remanufacturer as applicable in the end-of-year report, including errors in credit calculation, may be corrected 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's or remanufacturer's credits are reduced. Errors in the manufacturer's or remanufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(2) If EPA or the manufacturer or remanufacturer determines that a reporting error occurred on an end of year report previously submitted to EPA under this section, the manufacturer's or remanufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's or remanufacturers end-of-year report indicates a credit shortfall, the manufacturer or remanufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all locomotives and locomotive engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's or remanufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's or remanufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer or remanufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer or remanufacturer.

§ 92.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in

accordance with § 92.216 and, if a manufacturer or remanufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart E—Emission-Related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 92.401 Applicability.

The requirements of this subpart are applicable to manufacturers and remanufacturers of locomotives and locomotive engines subject to the provisions of subpart A of this part. The requirement to report emission-related defects affecting a given class or category of locomotives or locomotive engines applies for eight years from the end of the year in which such locomotives or locomotive engines were manufactured, or remanufactured, as applicable.

§ 92.402 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.403 Emission defect information report.

(a) A manufacturer or remanufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects, (or based on other information) that a specific emission-related defect exists in ten or more locomotives or locomotive engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale, or reintroduction into service of a remanufactured locomotive or locomotive engine, of the affected locomotives or locomotive engines to an ultimate purchaser.

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to effect 10 or more locomotives or locomotive engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined as follows:

(1) The manufacturer's or remanufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of locomotives or locomotive engines potentially affected by the defect including make, model, calendar year produced, purchaser (or owner) and any other information as may be required to identify the locomotives or locomotive engines affected.

(4) For each class or category of locomotives and locomotive engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of locomotives and/or locomotive engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective locomotives or locomotive engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective locomotive or locomotive engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer or remanufacturer.

§ 92.404 Voluntary emissions recall reporting.

(a) When any manufacturer or remanufacturer initiates a voluntary emissions recall campaign involving a locomotive or locomotive engine, the manufacturer or remanufacturer shall submit to EPA a report describing the manufacturer's or remanufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of locomotives or locomotive engines recalled including the number of locomotives or locomotive engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the locomotives or locomotive engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the locomotives or locomotive engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer or remanufacturer will notify locomotive or locomotive engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's or remanufacturer's reasons for imposing any such condition, and a description of the proof to be required of a locomotive or locomotive-engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by locomotive or locomotive-engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming locomotives or locomotive engines are to be remedied by persons other than authorized warranty agents of the manufacturer or remanufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer or remanufacturer who will remedy the defect.

(7) A copy of any written notification sent to locomotive or locomotive-engine owners.

(8) A description of the system by which the manufacturer or remanufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operation or performance, and safety of each class or category of locomotives or locomotive engines to be recalled.

(11) A sample of any label to be applied to locomotives or locomotive engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer or remanufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected locomotives or locomotive engines, whichever occurs first, commencing with the quarter after the voluntary

emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or category of locomotive or locomotive engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer or remanufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of locomotives or locomotive engines involved in the voluntary emissions recall campaign.

(4) Number of locomotives or locomotive engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of locomotives or locomotive engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected locomotives or locomotive engines found to be affected by the emissions-related defect.

(7) Number of locomotives or locomotive engines actually receiving repair under the remedial plan.

(8) Number of locomotives or locomotive engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of locomotives or locomotive engines determined to be ineligible for remedial action due to a failure to properly maintain or use such locomotives or locomotive engines.

(10) Three copies of any service bulletins which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to locomotive or locomotive-engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer or remanufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer or remanufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of locomotive and locomotive-engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

§ 92.405 Alternative report formats.

(a) Any manufacturer or remanufacturer may submit a plan for making either of the reports required by §§ 92.403 and 92.404 on computer diskettes, magnetic tape or other machine readable format. The plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the reporting system, the manufacturer or remanufacturer may use such system until otherwise notified by the Administrator.

§ 92.406 Reports filing: record retention.

(a) The reports required by §§ 92.403 and 92.404 shall be sent to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460.

(b) The information gathered by the manufacturer or remanufacturer to compile the reports required by §§ 92.403 and 92.404 shall be retained for not less than 8 years from the date of the manufacture of the locomotives or locomotive engines and shall be made available to duly authorized officials of the EPA upon request.

§ 92.407 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart shall not affect a manufacturer's or a remanufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 92.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 92.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer or remanufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to these regulations is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer and Remanufacturer Production Line Testing and Audit Programs

§ 92.501 Applicability.

The requirements of this subpart are applicable to manufacturers and remanufacturers of locomotives and locomotive engines subject to the provisions of subpart A of this part, except as follows:

(a) The requirements of §§ 92.503, 92.505, 92.506, 92.507, 92.508, and 92.510 only apply to manufacturers of freshly manufactured locomotives or locomotive engines (including those used for repowering). The Administrator may also apply these requirements to remanufacturers of any locomotives or locomotive engines for which there is reason to believe production problems exist that could affect emissions performance. EPA will notify such remanufacturers when it makes a determination that production problems may exist that could affect emissions performance, and the requirements of these sections shall apply as specified in the notice.

(b) The requirements of § 92.511 only apply to remanufacturers of locomotives and locomotive engines.

§ 92.502 Definitions.

The definitions in subpart A of this part apply to this subpart.

§ 92.503 General Requirements.

(a) Manufacturers (and remanufacturers, where applicable) shall test production line locomotives or locomotive engines using the test procedures specified in § 92.506. The Administrator may require manufacturers and remanufacturers to conduct production line testing on locomotives. If the Administrator determines that locomotive testing is required, he/she shall notify the manufacturer or remanufacturer, and shall specify in such notice the time period in which the manufacturer or remanufacturer shall complete such testing.

(b) Remanufacturers of locomotives and locomotive engines shall conduct audits pursuant to the requirements of § 92.511 to ensure that remanufactured locomotives and locomotive engines comply with the requirements of this part.

§ 92.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer or remanufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any locomotive or locomotive engine is to be introduced into commerce or any emission-related component is manufactured, remanufactured, assembled, or stored;

(2) Any facility where any test or audit conducted pursuant to a manufacturer's or remanufacturer's production line testing or auditing program or any procedure or activity connected with such test or audit is or was performed;

(3) Any facility where any test locomotive or locomotive engine is present; and

(4) Any facility where any record required under § 92.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of locomotive or locomotive engine manufacture, remanufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of locomotive or locomotive engine test procedures or activities, including test locomotive or engine selection, preparation and service accumulation, emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of a locomotive or locomotive engine; and

(4) To inspect and photograph any part or aspect of any locomotive or locomotive engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer or remanufacturer to make arrangements with those in charge of a facility operated for the manufacturer or remanufacturer's benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any locomotive or engine which is being, has been, or will be used for production line testing or auditing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer or remanufacturer, a manufacturer or remanufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer or remanufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed ex parte to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or remanufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer or remanufacturer is responsible for locating its foreign testing, manufacturing, and remanufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 92.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer or remanufacturer will begin to randomly select locomotives or locomotive engines from each engine family for production line testing at a rate of one percent. Each locomotive or locomotive engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible.

(1) The required sample size for an engine family is the lesser of five tests per model year or one percent of projected annual production, with a minimum sample size for an engine family of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers and remanufacturers may elect to test additional locomotives or locomotive engines. All additional locomotives or locomotive engines must be tested in accordance with the applicable test procedures of this part.

(b) The manufacturer or remanufacturer must assemble the test locomotives or locomotive engines using the same mass production process that will be used for locomotives or locomotive engines to be introduced into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test locomotive or locomotive engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other locomotives or locomotive engines of that family, except with the approval of the Administrator.

§ 92.506 Test procedures.

(a)(1) For locomotives and locomotive engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in subpart B of this part, except as provided in this section.

(2) The Administrator may, on the basis of a written application by a manufacturer or remanufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any locomotive or locomotive engine he/she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(3) If test procedures other than those in subpart B were used in certification of the engine family being tested under this subpart (other than alternate test procedures necessary for testing of a development engine instead of a low mileage locomotive or a low hour engine under § 92.9), the manufacturer or remanufacturer shall use the test procedures used in certification for production line testing.

(b)(1) The manufacturer or remanufacturer may not adjust, repair, prepare, modify, or perform any emission test on, any test locomotive or locomotive engine unless this adjustment, repair, preparation,

modification and/or test is documented in the manufacturer's or remanufacturer's locomotive or engine assembly and inspection procedures and is actually performed by the manufacturer or remanufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) Any adjustable locomotive or locomotive engine parameter must be set to values or positions that are within the range recommended to the ultimate purchaser.

(3) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Service Accumulation/Green Engine factor. The manufacturer or remanufacturer shall accumulate service on the locomotives and locomotive engines to be tested equivalent to 300 hours of operation. In lieu of conducting such service accumulation, the manufacturer or remanufacturer may establish a Green Engine factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer or remanufacturer shall obtain the approval of the Administrator prior to using a Green Engine factor.

(d) The manufacturer or remanufacturer may not perform any maintenance on test locomotives or locomotive engines after selection for testing.

(e) If a locomotive or locomotive engine is shipped to a facility other than the production facility for production line testing, and an adjustment or repair is necessary because of such shipment, the locomotive or locomotive engine manufacturer or remanufacturer must perform the necessary adjustment or repair only after the initial test of the locomotive or locomotive engine, except where the Administrator has determined that the test would be impossible to perform or would permanently damage the locomotive engine.

(f) If a locomotive or locomotive engine cannot complete the service accumulation, if applicable, or an emission test, because of a malfunction, the manufacturer or remanufacturer may request that the Administrator authorize either the repair of that locomotive or locomotive engine or its deletion from the test sequence.

(g) Retesting. (1) If a locomotive or locomotive engine manufacturer or remanufacturer determines that any production line emission test of a locomotive or locomotive engine is invalid, the locomotive or locomotive engine must be retested in accordance with the requirements of this subpart. Emission results from all tests must be reported to EPA, including test results the manufacturer or remanufacturer determines are invalid. The locomotive or locomotive engine manufacturer or remanufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 92.508(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the locomotive or locomotive engine manufacturer or remanufacturer within ten working days from receipt of the request.

§ 92.507 Sequence of testing.

If one or more locomotives or locomotive engines fail a production line test, then the manufacturer or remanufacturer must test two additional locomotives or locomotive engines from the next fifteen produced in that engine family, for each locomotive or locomotive engine that fails.

§ 92.508 Calculation and reporting of test results.

(a) Manufacturers and remanufacturers shall calculate initial test results using the applicable test procedure specified in § 92.506(a). These results must also include the green engine factor, if applicable. The manufacturer or remanufacturer shall round these results, in accordance with ASTM E29–93a (incorporated by reference at § 92.5), to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test locomotive or locomotive engine, dividing by the number of tests conducted on the locomotive or locomotive engine, and rounding in accordance with ASTM E29–93a (incorporated by reference at § 92.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) Manufacturers and remanufacturers shall calculate the final test results for each test locomotive or locomotive engine by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the final test results, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 92.5) to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(d) If, subsequent to an initial failure of a production line test, the average of the test results for the failed locomotive or locomotive engine and the two additional locomotives or locomotive engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer or remanufacturer must notify EPA within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each manufacturer or remanufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's or remanufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was tested;

(4) A description of the test locomotives or locomotive engines;

(5) For each test conducted:

(i) A description of the test locomotive or locomotive engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number;

(D) Number of megawatt-hours (or miles if applicable) of service accumulated on locomotive or locomotive engine prior to testing; and

(E) Description of green engine factor; how it is determined and how it is applied;

(ii) Location(s) where service accumulation was conducted and description of accumulation procedure and schedule, if applicable;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all production line emission tests conducted, whether valid or invalid, and the reason for invalidation of any test results, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and testing which was performed on the test locomotive or locomotive engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on other production locomotive or locomotive engines;

(v) Any other information the Administrator may request relevant to the determination whether the new locomotives or locomotive engines being manufactured or remanufactured by the manufacturer or remanufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed locomotive or locomotive engine as defined in § 92.510(a), a description of the remedy and test results for all retests as required by § 92.512(g);

(7) The date of the end of the locomotive or locomotive engine manufacturer's model year production for each engine family tested; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer or remanufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 92. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect locomotives or locomotive engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 92.509 Maintenance of records; submittal of information.

(a) The manufacturer or remanufacturer for any new locomotive or locomotive engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 92.503. The equipment requirements in subpart B of this part apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test or audit conducted pursuant to this subpart and include:

(i) The date, time, and location of each test or audit;

(ii) The method by which the green engine factor was calculated or the number of hours of service accumulated on the test locomotive or locomotive engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test or audit;

(iv) A record and description of any adjustment, repair, preparation or modification performed on test locomotives or locomotive engines, giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the locomotive or locomotive engine was shipped from the assembly plant, associated storage facility or port facility, and the date the locomotive or locomotive engine was received at the testing facility;

(vi) A complete record of all emission tests or audits performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in subpart B of this part;

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2) of this section , commencing with the test locomotive or locomotive engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer or remanufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer or remanufacturer must retain all records required to be maintained under this subpart for a period of eight (8) years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's or remanufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer or remanufacturer must, upon request by the Administrator, submit the following information with regard to locomotive or locomotive engine production:

(1) Projected production for each configuration within each engine family for which certification has been requested and/or approved.

(2) Number of locomotives or engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer or remanufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403-J, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

(f) The manufacturer or remanufacturer must electronically submit the results of its production line testing or auditing using an EPA information format.

§ 92.510 Compliance with criteria for production line testing.

(a) A failed locomotive or locomotive engine is one whose final test results pursuant to § 92.508(c), for one or more of the applicable pollutants, exceed the applicable emission standard or FEL.

(b) An engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed locomotive or locomotive engine and the two additional locomotives or locomotive engines tested, is greater than any applicable emission standard or FEL.

§ 92.511 Remanufactured locomotives: installation audit requirements.

(a) Remanufacturers of locomotives or locomotive engines shall audit the remanufacture of locomotives covered by its certificate(s) of conformity for proper components, component settings and component installations on randomly chosen locomotives in an engine family. Such audits shall be conducted in compliance with the requirements of this section.

(1) The remanufacturer must ensure that all emission related components are properly installed on the locomotive or locomotive engine.

(2) The remanufacturer must ensure that all emission related components are set to the proper specification as indicated in the remanufacture instructions.

(3) Remanufacturers are allowed to submit audits performed by the owners or operators of the locomotives, provided the audits are performed in accordance with the provisions of this section.

(b)(1) The required initial sample size (i.e., the sample size if no failures occur)

for each remanufacturer is five percent of the remanufacturer's annual sales per model year per installer, with a maximum number of ten per engine family per installer.

(2) The locomotives audited shall be randomly selected after the remanufacture is complete. The Administrator may allow the locomotives to be selected prior to the completion of the remanufacture, where such preselection would not have the potential to affect the manner in which the locomotive was remanufactured (e.g., where the installer is not aware of the selection prior to the completion of the remanufacture).

(c) The remanufactured locomotive or locomotive engine may accumulate no more than 10,000 miles prior to an audit.

(d) A failed remanufactured locomotive or locomotive engine is one on which any remanufacture components are found to be improperly installed, improperly adjusted or incorrectly used.

(e) If a remanufactured locomotive or locomotive engine fails an audit, then the remanufacturer must audit two additional locomotives or locomotive engines from the next ten remanufactured in that engine family by that installer.

(f) An engine family is determined to have failed an audit, if at any time during the model year, the remanufacturer determines that the three locomotives audited are found to have had any improperly installed, improperly adjusted or incorrectly used components. The remanufacturer must notify EPA within 2 working days of a determination of an engine family audit failure.

(g) Within 30 calendar days of the end of each quarter, each remanufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the remanufacturer's audit facilities which were utilized to conduct auditing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was audited;

(4) For each audit conducted:

(i) A description of the audit locomotive or locomotive engine, including:

(A) Configuration and engine family identification;

(B) Year, make, build date, and remanufacturer date; and

(C) Engine identification number;

(ii) Any other information the Administrator may request relevant to the determination whether the new locomotives or locomotive engines being manufactured or remanufactured by the remanufacturer do in fact conform with the regulations in this part with respect to which the certificate of conformity was issued;

(5) For each failed locomotive or locomotive engine as defined in paragraph (d) of this section, a description of the remedy as required by § 92.512(g);

(6) The following signed statement and endorsement by an authorized representative of the remanufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line auditing program was conducted in complete conformance with all applicable regulations under 40 CFR part 92. No emission-related changes to production processes or quality control procedures for the engine family audited have been made during this production line auditing program that affect locomotives or locomotive engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 92.512 Suspension and revocation of certificates of conformity.

(a)(1) The certificate of conformity is suspended with respect to any locomotive or locomotive engine that fails a production line test pursuant to § 92.510(a), effective from the time the testing of that locomotive or locomotive engine is completed.

(2) The certificate of conformity is suspended with respect to any locomotive or locomotive engine that fails an audit pursuant to § 92.511(d), effective from the time that auditing of that locomotive or locomotive engine is completed.

(b)(1) The Administrator may suspend the certificate of conformity for an engine family which is in noncompliance pursuant to § 92.510(b), thirty days after the engine family is deemed to be in noncompliance.

(2) The Administrator may suspend the certificate of conformity for an engine family which is determined to have failed an audit pursuant to § 92.511(f). This suspension will not occur before thirty days after the engine family is deemed to be in noncompliance.

(c) If the results of testing or auditing pursuant to these regulations indicate that locomotives or engines of a particular family produced at one plant of a manufacturer or remanufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for locomotives or locomotive engines manufactured or remanufactured by the manufacturer or remanufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any locomotive or locomotive engine family in whole or in part if:

(1) The manufacturer or remanufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer or remanufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer or remanufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 92.504 for any reason.

(e) The Administrator shall notify the manufacturer or remanufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in noncompliance under §§ 92.508(d), 92.510(a), 92.510(b) or 92.511(f) is made, whichever is earlier, except that the certificate is immediately suspended with respect to any failed locomotives or locomotive engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the locomotive, engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed locomotive or locomotive engine, as provided for in paragraph (a) of this section, the manufacturer or remanufacturer must take the following actions before the certificate is reinstated for that failed locomotive or locomotive engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the locomotive or locomotive engine conforms to applicable standards or family emission limits by retesting, or reauditing if applicable, the locomotive or

locomotive engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing, or auditing if applicable, on the failed locomotive or locomotive engine, which contains a description of the remedy and test (or audit) results for each locomotive or engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer or remanufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the locomotives or locomotive engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken by the manufacturer or remanufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing, or auditing if applicable, locomotives or engines selected from normal production runs of that engine family. Such testing (or auditing) must comply with the provisions of this subpart. If the manufacturer or remanufacturer elects to continue testing, or auditing if applicable, individual locomotives or engines after suspension of a certificate, the certificate is reinstated for any locomotive or engine actually determined to be in conformance with the applicable standards or family emission limits through testing, or auditing if applicable, in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer or remanufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in locomotive or engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer or remanufacturer, within five working days after receipt of the report in paragraph (g) of this section, whether subsequent testing or auditing if applicable, under this subpart will be sufficient to evaluate the change or changes or whether additional testing or auditing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer or remanufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing, or auditing if applicable, locomotives or engines selected from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing, or auditing if applicable, reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test or audit locomotive or engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraphs (b), (c), or (f) of this section, a manufacturer or remanufacturer may request a hearing as to whether the tests or audits have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a), (b), (c) and (d) of this section:

(1) Shall be made only after the manufacturer or remanufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 92.513, 92.514, and 92.515 and

(2) Need not apply to locomotives or engines no longer in the possession of the manufacturer or remanufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under § 92.215, and prior to the commencement of a hearing under § 92.513, if the manufacturer or remanufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer or remanufacturer to avoid storing non-test locomotives or locomotive engines while conducting subsequent testing or auditing of the noncomplying family, a manufacturer or remanufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer or remanufacturer must commit to recall all locomotives or locomotive engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing, or auditing if applicable, and must commit to remedy any nonconformity at no expense to the owner.

§ 92.513 Request for public hearing.

(a) If the manufacturer or remanufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 92.512(a), the manufacturer or remanufacturer may request a public hearing.

(b) The manufacturer's or remanufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer or remanufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division, Office of Mobile Sources and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer or remanufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer or remanufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer or remanufacturer shall include in the request for a public hearing:

(1) A statement as to which configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer or remanufacturer at the hearing, except that in the case of the hearing requested under § 92.512(j), the hearing is restricted to the following issues:

(i) Whether tests or audits have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether there exists a basis for distinguishing locomotives or

locomotive engines produced at plants other than the one from which locomotives or locomotive engines were selected for testing or auditing which would invalidate the Administrator's decision under § 92.512(c));

(3) A statement specifying reasons why the manufacturer or remanufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's or remanufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 92.514 Administrative procedures for public hearing.

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) *Functions.* The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d) *Summary decision.* (1) In the case of a hearing requested under § 92.512(j), when it clearly appears from the data and other information contained in the request for a hearing that no genuine and substantial question of fact or law exists with respect to the issues specified in § 92.513(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 92.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 92.512(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer or remanufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 92.516.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the **Federal Register** or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 92.513(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 92.513(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 92.513 will be scheduled to commence within 14 days of receipt of the request for a hearing.

§ 92.515 Hearing procedures.

The procedures provided in § 86.1014–84(i) through (s) of this chapter apply for hearings requested pursuant to § 92.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§ 92.516 Appeal of hearing decision.

The procedures provided in § 86.1014–84(t) through (aa) of this chapter apply for appeals filed with respect to hearings held pursuant to § 92.515.

§ 92.517 Treatment of confidential information.

Except for information required by § 92.508(e)(2) and quarterly emission test results described in § 92.508(e), information submitted pursuant to this subpart shall be made available to the public by EPA notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 92.4 apply to the information required by § 92.508(e)(2) and all other

information submitted pursuant to this subpart.

Subpart G—In-Use Testing Program

§ 92.601 Applicability.

The requirements of this subpart are applicable to all manufacturers and remanufacturers of locomotives subject to the provisions of subpart A of this part, including all locomotives powered by any locomotive engines subject to the provisions of subpart A of this part.

§ 92.602 Definitions.

Except as otherwise provided, the definitions in subpart A of this part apply to this subpart.

§ 92.603 General provisions.

(a) EPA shall annually identify engine families and configurations within families on which the manufacturer or remanufacturer must conduct in-use emissions testing pursuant to the requirements of this section.

(1) Manufacturers and remanufacturers shall test one locomotive engine family each year for which it has received a certificate of conformity from EPA. Where a manufacturer holds certificates of conformity for both freshly manufactured and remanufactured locomotive engine families, the Administrator may require the manufacturer to test one freshly manufactured engine family and one remanufactured engine family. The Administrator may require a manufacturer or remanufacturer to test additional engine families if he/she has reason to believe that locomotives in an engine family do not comply with emission standards in use.

(2) For engine families of less than 10 locomotives per year, no in-use testing will be required, unless the Administrator has reason to believe that those engine families are not complying with the applicable emission standards in use.

(b) Locomotive manufacturers or remanufacturers shall perform emission testing of a sample of in-use locomotives from an engine family, as specified in § 92.605. Manufacturers or remanufacturers shall submit data from this in-use testing to EPA. EPA will use these data, and any other data available to EPA, to determine the compliance status of classes of locomotives, including for purposes of subpart H of this part, and whether remedial action is appropriate.

§ 92.604 In-use test procedure.

(a) Testing conducted under this subpart shall be conducted on locomotives; testing under this subpart shall not be conducted using an engine that is not installed in a locomotive at the time of testing.

(b) Locomotives tested under this subpart shall be tested using the locomotive test procedures outlined in subpart B of this part, except as provided in this section.

(c) The test procedures used for in-use testing shall be consistent with the test procedures used for certification, except for cases in which certification testing was not conducted with locomotive, but with a development engine, or other engine. In such cases, the Administrator shall require deviations from the certification test procedures as appropriate, including requiring that the test be conducted on a locomotive. The Administrator may allow or require other alternate procedures, with advance approval. For all testing conducted under this subpart, emission rates shall be calculated in accordance with the provisions of subpart B of this part that apply to locomotive testing.

(d) Any adjustable locomotive or locomotive engine parameter must be set to values or positions that are within the range specified in the certificate of conformity. If so directed by the Administrator, the manufacturer or remanufacturer will set these parameters to values specified by the Administrator.

(e) The Administrator may waive portions or requirements of the applicable test procedure, if any, that are not necessary to determine in-use compliance.

§ 92.605 General testing requirements.

(a) *Number of locomotives to be tested.* The manufacturer or remanufacturer shall test in-use locomotives, from an engine family selected by EPA, which have accumulated between one-half and three-quarters of the engine family's useful life. The number of locomotives to be tested by a manufacturer or remanufacturer will be determined by the following method:

(1) A minimum of 2 locomotives per engine family per year for each engine family that reaches the minimum age specified above provided that no locomotive tested fails to meet any applicable standard. For each failing locomotive, two more locomotives shall be tested until the total number of locomotives tested equals 10, except as provided in paragraph (a)(2) of this section.

(2) If an engine family has not changed from one year to the next and has certified using carry over emission data and has been previously tested under paragraph (a)(1) of this section (and EPA has not ordered or begun to negotiate remedial action of that family), then only one locomotive per engine family per year must be tested. If such locomotive fails to meet applicable standards for any pollutant, testing for that engine family must be conducted as outlined under paragraph (a)(1) of this section.

(b) At the discretion of the Administrator, a locomotive or locomotive engine manufacturer or remanufacturer may test more locomotives than the minima described above or may concede failure before locomotive number 10.

(c) The Administrator will consider failure rates, average emission levels and the existence of any defects among other factors in determining whether to pursue remedial action. The Administrator may order a recall pursuant to subpart H of this part before testing reaches the tenth locomotive.

(d) *Collection of in-use locomotives.* The locomotive manufacturer or remanufacturer shall procure in-use locomotives which have been operated for between one-half and three-quarters of the locomotive's useful life for testing under this subpart. The manufacturer or remanufacturer shall complete testing required by this section for any engine family before useful life of the locomotives in the engine family passes.

§ 92.606 Maintenance, procurement and testing of in-use locomotives.

(a) A test locomotive must have a maintenance history that is representative of actual in-use conditions, and identical or equivalent to the manufacturer's or remanufacturer's recommended emission-related maintenance requirements.

(1) In procuring in-use locomotives for in-use testing, a manufacturer or remanufacturer shall question the end users regarding the accumulated usage, maintenance, operating conditions, and storage of the test locomotives.

(2) The selection of test locomotives is made by the manufacturer or remanufacturer, and is subject to EPA approval. Information used by the manufacturer or remanufacturer to procure locomotives for in-use testing shall be maintained as required in § 92.215.

(b) The manufacturer or remanufacturer may perform minimal set-to-spec maintenance on a test locomotive prior to conducting in-use testing. Maintenance may include only that which is listed in the owner's instructions for locomotives with the amount of service and age of the acquired test locomotive.

Documentation of all maintenance and adjustments shall be maintained and retained.

(c) Results of one valid emission test using the test procedure outlined in subpart B of this part is required for each in-use locomotive.

(d) If in-use testing results show that an in-use locomotive fails to comply with any applicable emission standards, the manufacturer or remanufacturer shall determine the reason for noncompliance. The manufacturer or remanufacturer must report all determinations for noncompliance in its quarterly in-use test result report pursuant to § 92.607(a)(11).

§ 92.607 In-use test program reporting requirements.

(a) The manufacturer or remanufacturer shall submit to the Administrator within three (3) months of completion of testing all emission testing results generated from the in-use testing program. The following information must be reported for each locomotive tested:

(1) Engine family, and configuration;

(2) Locomotive and engine models;

(3) Locomotive and engine serial numbers;

(4) Date of manufacture and/or remanufacture(s), as applicable;

(5) Megawatt-hours of use (or miles, as applicable);

(6) Date and time of each test attempt;

(7) Results (if any) of each test attempt;

(8) Results of all emission testing;

(9) Summary of all maintenance and/or adjustments performed;

(10) Summary of all modifications and/or repairs;

(11) Determinations of noncompliance; and

(12) The following signed statement and endorsement by an authorized representative of the manufacturer or remanufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This in-use testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 92. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

(b) The manufacturer or remanufacturer shall report to the Administrator within three (3) months of completion of testing the following information for each engine family tested:

(1) The serial numbers of all locomotive that were excluded from the test sample because they did not meet the maintenance requirements of § 92.606;

(2) The owner of each locomotive identified in paragraph (b)(1) of this section (or other entity responsible for the maintenance of the locomotive); and

(3) The specific reasons why the locomotives were excluded from the test sample.

(c) The manufacturer or remanufacturer must submit, via floppy disk, the information outlined in paragraphs (a) and (b) of this section using a pre-approved information heading. The Administrator may exempt manufacturers or remanufacturers from this requirement upon written request with supporting justification.

(d) All testing reports and requests for approvals made under this subpart shall be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division, U.S. Environmental Protection Agency, 6403–J, 401 M Street S.W., Washington, D.C. 20460.

Subpart H—Recall Regulations

§ 92.701 Applicability.

The requirements of subpart H of this part are applicable to all manufacturers and remanufacturers of locomotives and locomotive engines subject to the provisions of subpart A of this part.

§ 92.702 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.703 Voluntary emissions recall.

(a) Prior to an EPA ordered recall, a manufacturer or remanufacturer may perform (without petition) a voluntary emissions recall pursuant to regulations in subpart E of this part. Such manufacturer or remanufacturer is subject to the reporting requirements in subpart E of this part.

(b) If a determination of nonconformity with the requirements of section 213 of the Act is made (i.e. if EPA orders a recall under the provisions of section 207(c)), the manufacturer(s) or remanufacturer(s) will not have the option of an alternate remedial action and an actual recall would be required.

§ 92.704 Notice to manufacturer or remanufacturer of nonconformity; submission of remedial plan.

(a) The manufacturer or remanufacturer will be notified whenever the Administrator has determined that a substantial number of a class or category of locomotives or locomotive engines produced by that manufacturer or remanufacturer, although properly maintained and used, do not conform to the regulations prescribed under the Act in effect during, and applicable to the model year of such locomotives or locomotive engines. The notification will include a description of each class or category of locomotives or locomotive engines encompassed by the determination of nonconformity, will give the factual basis for the determination of nonconformity (except information previously provided the manufacturer or remanufacturer by the Agency), and will designate a date, no sooner than 45 days from the date of receipt of such notification, by which the manufacturer or remanufacturer shall have submitted a plan to remedy the nonconformity.

(b) Unless a hearing is requested pursuant to § 92.709, the remedial plan shall be submitted to the Administrator within the time limit specified in the Administrator's notification, provided that the Administrator may grant a manufacturer or remanufacturer an extension upon good cause shown.

(c) If a manufacturer or remanufacturer requests a public hearing pursuant to § 92.709, unless as a result of such hearing the Administrator withdraws his determination of nonconformity, the manufacturer or remanufacturer shall submit the remedial plan within 30 days of the end of such hearing.

§ 92.705 Remedial plan.

(a) When any manufacturer or remanufacturer is notified by the Administrator that a substantial number of any class or category of locomotives or locomotive engines, although properly maintained and used, do not conform to the applicable regulations of this part (including emission standards or family emission limits), the manufacturer or remanufacturer shall submit a plan to the Administrator to remedy such nonconformity. The plan shall contain the following:

(1) A description of each class or category of locomotive or locomotive engine to be recalled including the year(s) of manufacture or remanufacture, the make, the model, the calendar year and such other information as may be required to identify the locomotives or locomotive engines to be recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments or other changes to be made to bring the locomotives or locomotive engines into conformity, including a brief summary of the data and technical studies which support the manufacturer's or remanufacturer's decision as to the

particular remedial changes to be used in correcting the nonconformity.

(3) A description of the method by which the manufacturer or remanufacturer will determine the names and addresses of locomotive or locomotive engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's or remanufacturer's reasons for imposing any such condition, and a description of the proof to be required of a locomotive or locomotive engine owner to demonstrate compliance with any such condition. Eligibility may not be denied solely on the basis that the locomotive or locomotive engine owner used parts not manufactured or remanufactured by the original locomotive or locomotive engine manufacturer or remanufacturer, or had repairs not performed by such manufacturer or remanufacturer. No maintenance or use condition may be imposed unless it is, in the judgement of the Administrator, demonstrably related to preventing the nonconformity.

(5) A description of the procedure to be followed by locomotive or locomotive engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied: *Provided,* That repair shall be completed within a reasonable time designated by the Administrator from the date the owner first tenders his locomotive or locomotive engine after the date designated by the manufacturer or remanufacturer as the date on or after which the owner can have the nonconformity remedied.

(6) If some or all of the nonconforming locomotives or locomotive engines are to be remedied by persons other than authorized warranty agents of the manufacturer or remanufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer or remanufacturer who will remedy the nonconformity, and a statement indicating that the participating members of the class will be properly equipped to perform such remedial action.

(7) Three copies of the letters of notification to be sent to locomotive or locomotive engine owners.

(8) A description of the system by which the manufacturer or remanufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operability, and safety of each class or category of locomotives or locomotive engines to be recalled and a brief summary of the data, technical studies, or engineering evaluations which support these conclusions.

(11) Any other information, reports or data which the Administrator may reasonably determine is necessary to evaluate the remedial plan.

(b)(1) Notification to locomotive or locomotive engine owners shall be made by first class mail or by such means as approved by the Administrator.

(2) The manufacturer or remanufacturer shall use all reasonable means necessary to locate locomotive or locomotive engine owners.

(3) The Administrator reserves the right to require the manufacturer or remanufacturer to send by certified mail or other reasonable means subsequent notification to locomotive or locomotive engine owners.

(c)(1) The manufacturer or remanufacturer shall require those who perform the repair under the remedial plan to affix a label to each locomotive or locomotive engine repaired or, when required, inspected under the remedial plan.

(2) The label shall be placed in such location as approved by the Administrator consistent with Federal Railroad Administration regulations and shall be fabricated of a material suitable for the location in which it is installed and which is not readily removable intact.

(3) The label shall contain:

(i) The recall campaign number; and

(ii) A code designating the campaign facility at which the repair, or inspection for repair was performed.

(4) The Administrator reserves the right to waive any or all of the requirements of this paragraph (c) if he/she determines that they constitute an unwarranted burden to the manufacturer or remanufacturer.

(d) The Administrator may require the manufacturer or remanufacturer to conduct tests on components and locomotives or locomotive engines incorporating a change, repair, or modification reasonably designed and necessary to demonstrate the effectiveness of the change, repair, or modification.

Note to § 92.705: An interpretive ruling regarding § 92.705 is published in Appendix II to this part.

§ 92.706 Approval of plan: implementation.

(a) If the Administrator finds that the remedial plan is designed and effective to correct the nonconformity, he/she will so notify the manufacturer or remanufacturer in writing. If the remedial plan is not approved, the Administrator will provide the manufacturer or remanufacturer notice of the disapproval and the reasons for the disapproval in writing.

(b) Upon receipt of notice from the Administrator that the remedial plan has been approved, the manufacturer or remanufacturer shall commence implementation of the approved plan. Notification of locomotive or locomotive engine owners shall be in accordance with requirements of this subpart and shall proceed as follows:

(1) When no public hearing as described in § 92.709 is requested by the manufacturer or remanufacturer, notification of locomotive or locomotive engine owners shall commence within 15 working days of the receipt by the manufacturer or remanufacturer of the Administrator's approval unless otherwise specified by the Administrator.

(2) When a public hearing as described in § 92.709 is held, unless as a result of such hearing the Administrator withdraws the determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer or remanufacturer to provide prompt notification of such nonconformity.

§ 92.707 Notification to locomotive or locomotive engine owners.

(a) The notification of locomotive or locomotive engine owners shall contain the following:

(1) The statement: "The Administrator of the U.S. Environmental Protection Agency has determined that your locomotive or locomotive engine may be emitting pollutants in excess of the federal emission standards or family emission limits, as defined in 40 CFR Part 92. These standards or family

emission limits, as defined in 40 CFR Part 92 were established to protect the public health or welfare from the dangers of air pollution."

(2) A statement that the nonconformity of any such locomotives or locomotive engines which have been, if required by the remedial plan, properly maintained and used, will be remedied at the expense of the manufacturer or remanufacturer.

(3) A description of the proper maintenance or use, if any, upon which the manufacturer or remanufacturer conditions eligibility for repair under the remedial plan and a description of the proof to be required of a locomotive or locomotive engine owner to demonstrate compliance with such condition. Eligibility may not be denied solely on the basis that the locomotive or locomotive engine owner used parts not manufactured or remanufactured by the manufacturer or remanufacturer, or had repairs not performed by the manufacturer or remanufacturer.

(4) A clear description of the components which will be affected by the remedy and a general statement of the measures to be taken to correct the nonconformity.

(5) A description of the adverse effects, if any, that an uncorrected nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(6) A description of the adverse effects, if any, that such nonconformity would have on the performance or operability of the locomotive or locomotive engine.

(7) A description of the average effects, if any, that such nonconformity would have on the functions of other locomotive or locomotive engine components.

(8) A description of the procedure which the locomotive or locomotive engine owner should follow to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor required to correct the nonconformity, and the designation of facilities at which the nonconformity can be remedied.

(9) A telephone number provided by the manufacturer or remanufacturer, which may be used to report difficulty in obtaining recall repairs.

(10) The statement: "In order to ensure your full protection under the emission warranty made applicable to your (locomotive or locomotive engine) by federal law, and your right to participate in future recalls, it is recommended that you have (locomotive or locomotive engine) serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your (locomotive or locomotive engine)."

(b) No notice sent pursuant to paragraph (a) of this section nor any other contemporaneous communication sent to locomotive or locomotive engine owners or dealers shall contain any statement or implication that the nonconformity does not exist or that the nonconformity will not degrade air quality.

(c) The manufacturer or remanufacturer shall be informed of any other requirements pertaining to the notification under this section which the Administrator has determined are reasonable and necessary to ensure the effectiveness of the recall campaign.

§ 92.708 Records and reports.

(a) The manufacturer or remanufacturer shall provide to the Administrator a copy of all communications which relate to the remedial plan directed to persons who are to perform the repair under the remedial plan. Such copies shall be mailed to the Administrator contemporaneously with their transmission to persons who are to perform the repair under the remedial plan.

(b) The manufacturer or remanufacturer shall provide for the establishment and maintenance of records to enable the Administrator to conduct a continuing analysis of the adequacy of the recall campaign. The records shall include, for each class or category of locomotive or locomotive engine, but need not be limited to, the following:

(1) Recall campaign number as designated by the manufacturer or remanufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of locomotives or locomotive engines involved in the recall campaign.

(4) Number of locomotives or locomotive engines known or estimated to be affected by the nonconformity.

(5) Number of locomotives or locomotive engines inspected pursuant to the remedial plan.

(6) Number of inspected locomotives or locomotive engines found to be affected by the nonconformity.

(7) Number of locomotives or locomotive engines actually receiving repair under the remedial plan.

(8) Number of locomotives or locomotive engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrapping or for other reasons (specify).

(9) Number of locomotives or locomotive engines determined to be ineligible for remedial action due to a failure to properly maintain or use such locomotives or locomotive engines.

(c) If the manufacturer or remanufacturer determines that the original answers for paragraphs (b)(3) and (b)(4) of this section are incorrect, revised figures and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (b)(6), (b)(7), (b)(8), and (b)(9) of this section shall be cumulative totals.

(d) Unless otherwise directed by the Administrator, the information specified in paragraph (b) of this section shall be included in quarterly reports, with respect to each recall campaign, for six consecutive quarters beginning with the quarter in which the notification of owners was initiated, or until all nonconforming locomotives or locomotive engines involved in the campaign have been remedied, whichever occurs sooner. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter.

(e) The manufacturer or remanufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, lists of the names and addresses of locomotive or locomotive engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) When eligibility for repair is conditioned on proper maintenance or use, that were determined not to qualify for such remedial action.

(f) The records described in paragraph (e) of this section shall be made available to the Administrator upon request.

(g) The records and reports required by this section shall be retained for not less than eight (8) years.

§ 92.709 Public hearings.

(a) *Definitions.* The following definitions shall be applicable to this section:

(1) *Hearing Clerk* shall mean the Hearing Clerk of the Environmental Protection Agency.

(2) *Intervenor* shall mean a person who files a petition to be made an intervenor pursuant to paragraph (g) of this section and whose petition is approved.

(3) *Manufacturer or remanufacturer* refers to a manufacturer or remanufacturer contesting a recall order directed at that manufacturer or remanufacturer.

(4) *Party* shall include the Environmental Protection Agency, the manufacturer or remanufacturer, and any intervenors.

(5) *Presiding Officer* shall mean an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(6) *Environmental Appeals Board* shall mean the Board within the Agency described in § 1.25 of this chapter. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this subpart. Appeals directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(b) *Request for public hearing.* (1)(i) If the manufacturer or remanufacturer disagrees with the Administrator's finding of nonconformity he may request a public hearing as described in this section. Requests for such a hearing shall be filed with the Administrator not later than 45 days after the receipt of the Administrator's notification of nonconformity unless otherwise specified by the Administrator. Two copies of such request shall simultaneously be served upon the Director of the Engine Programs and Compliance Division and two copies filed with the Hearing Clerk. Failure of the manufacturer or remanufacturer to request a hearing within the time provided shall constitute a waiver of his right to such a hearing. In such a case, the manufacturer or remanufacturer shall carry out the recall order as required by § 92.705.

(ii) Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his discretion and for good cause shown, grant the manufacturer or remanufacturer a hearing to contest the nonconformity.

(2) The request for a public hearing shall contain:

(i) A statement as to which classes or categories of locomotives or locomotive engines are to be the subject of the hearing;

(ii) A concise statement of the issues to be raised by the manufacturer or remanufacturer at the hearing for each class or category of locomotive or locomotive engine for which the manufacturer or remanufacturer has requested the hearing; and

(iii) A statement as to reasons the manufacturer or remanufacturer believes it will prevail on the merits on each of the issues so raised.

(3) A copy of all requests for public hearings shall be kept on file in the Office of the Hearing Clerk and shall be made available to the public during Agency business hours.

(c) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section shall be filed with the Hearing Clerk. Filing shall be deemed timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section. If filing is to be accomplished by mailing, the documents shall be sent to the address set forth in the notice of public hearing as described in paragraph (f) of this section.

(2) Except for requests to commence a hearing, at the same time a party files with the Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials, to be introduced into evidence or papers filed in connection with any appeal, it shall serve upon all other parties copies thereof. A certificate of service shall be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division shall be mailed to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by mail is complete upon mailing.

(d) *Time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included in computing any such period allowed for the filing of any document or paper, except that when such period expires on a Saturday, Sunday, or Federal legal holiday, such period shall be extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, three days shall be added to the prescribed period.

(e) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(f) *Notice of public hearings.* (1) Notice of a public hearing under this section shall be given by publication in the **Federal Register.** Notice will be given at least 30 days prior to the commencement of such hearings.

(2) The notice of a public hearing shall include the following information:

(i) The purpose of the hearing and the legal authority under which the hearing is to be held;

(ii) A brief summary of the Administrator's determination of nonconformity;

(iii) A brief summary of the manufacturer's or remanufacturer's basis for contesting the Administrator's determination of nonconformity;

(iv) Information regarding the time and location of the hearing and the address to which all documents required or permitted to be filed should be sent;

(v) The address of the Hearing Clerk to whom all inquiries should be directed and with whom documents are required to be filed;

(vi) A statement that all petitions to be made an intervenor must be filed with the Hearing Clerk within 25 days from the date of the notice of public hearing and must conform to the requirements of paragraph (g) of this section.

(3) The notice of public hearing shall be issued by the General Counsel.

(g) *Intervenors.* (1) Any person desiring to intervene in a hearing to be held under section 207(c)(1) of the Act shall file a petition setting forth the facts and reasons why he/she thinks he/she should be permitted to intervene.

(2) In passing upon a petition to intervene, the following factors, among other things, shall be considered by the Presiding Officer:

(i) The nature of the petitioner's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the petitioner;

(ii) The effect of the order which may be entered in the proceeding on petitioner's interest;

(iii) The extent to which the petitioner's interest will be represented

by existing parties or may be protected by other means;

(iv) The extent to which petitioner's participation may reasonably be expected to assist materially in the development of a complete record;

(v) The effect of the intervention on the Agency's statutory mandate.

(3) A petition to intervene must be filed within 25 days following the notice of public hearing under section 207(c)(1) of the Act and shall be served on all parties. Any opposition to such petition must be filed within five days of such service.

(4) All petitions to be made an intervenor shall be reviewed by the Presiding Officer using the criteria set forth in paragraph (g)(2) of this section and considering any oppositions to such petition. Where the petition demonstrates that the petitioner's interest is limited to particular issues, the Presiding Officer may, in granting such petition, limit petitioner's participation to those particular issues only.

(5) If the Presiding Officer grants the petition with respect to any or all issues, he/she shall so notify, or direct the Hearing Clerk to notify, the petitioner and all parties. If the Presiding Officer denies the petition he/she shall so notify, or direct the Hearing Clerk to notify, the petitioner and all parties and shall briefly state the reasons why the petition was denied.

(6) All petitions to be made an intervenor shall include an agreement by the petitioner, and any person represented by the petitioner, to be subject to examination and cross-examination and to make any supporting and relevant records available at its own expense upon the request of the Presiding Officer, on his/her own motion or the motion of any party or other intervenor. If the intervenor fails to comply with any such request, the Presiding Officer may in his/her discretion, terminate his/her status as an intervenor.

(h) *Intervention by motion.* Following the expiration of the time prescribed in paragraph (g) of this section for the submission of petitions to intervene in a hearing, any person may file a motion with the Presiding Officer to intervene in a hearing. Such a motion must contain the information and commitments required by paragraphs (g)(2) and (g)(6) of this section, and, in addition, must show that there is good cause for granting the motion and must contain a statement that the intervenor shall be bound by agreements, arrangements, and other determinations which may have been made in the proceeding.

(i) *Amicus Curiae.* Persons not parties to the proceedings wishing to file briefs may do so by leave of the Presiding Officer granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why the amicus brief is desirable.

(j) *Presiding Officer.* The Presiding Officer shall have the duty to conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, 556 and 557, to take all necessary action to avoid delay in the disposition of the proceedings and to maintain order. He/she shall have all power consistent with Agency rule and with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To require the submission of direct testimony in written form with or without affidavit whenever, in the opinion of the Presiding Officer, oral testimony is not necessary for full and true disclosure of the facts. Testimony concerning the conduct and results of tests and inspections may be submitted in written form;

(7) To enforce agreements and orders requiring access as authorized by law;

(8) To require the filing of briefs on any matter on which he/she is required to rule;

(9) To require any party or any witness, during the course of the hearing, to state his/her position on any issue;

(10) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(11) To make decisions or recommend decisions to resolve the disputed issues of the record of the hearing;

(12) To issue, upon good cause shown, protective orders as described in paragraph (n) of this section.

(k) *Conferences.* (1) At the discretion of the Presiding Officer, conferences may be held prior to or during any hearing. The Presiding Officer shall direct the Hearing Clerk to notify all parties and intervenors of the time and location of any such conference. At the discretion of the Presiding Officer, persons other than parties may attend. At a conference the Presiding Officer may:

(i) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party;

(ii) Set a hearing schedule for as many of the following as are deemed necessary by the Presiding Officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the Presiding Officer;

(C) Oral direct and cross-examination of a witness where necessary as prescribed in paragraph (p) of this section;

(D) Oral argument, if appropriate;

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(2) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the Presiding Officer and made part of the record.

(l) *Primary discovery (exchange of witness lists and documents).* (1) At a prehearing conference or within some reasonable time set by the Presiding Officer prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and a list of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(2)(i) The Presiding Officer, may, upon motion by a party or other person, and for good cause shown, by order:

(A) Restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness; and

(B) Prescribe other appropriate measures to protect a witness.

(ii) Any party affected by any such action shall have an adequate opportunity, once he learns the name of a witness and obtains the narrative summary of his expected testimony, to prepare for the presentation of his case.

(m) *Other discovery.* (1) Except as so provided by paragraph (l) of this section, further discovery, under this

paragraph (m), shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not obtainable voluntarily; and

(iii) That such information has significant probative value. The Presiding Officer shall be guided by the procedures set forth in the Federal Rules of Civil Procedure (28 U.S.C.), where practicable, and the precedents thereunder, except that no discovery shall be undertaken except upon order of the Presiding Officer or upon agreement of the parties.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion or motions therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The time and place where it will be taken. If the Presiding Officer determines the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) Failure to comply with an order issued pursuant to this paragraph (m) may lead to the inference that the information to be discovered would be adverse to the person or party from whom the information was sought.

(n) *Protective orders: in camera proceedings.* (1) Upon motion by a party or by the person from whom discovery is sought, and upon a showing by the movant that the disclosure of the information to be discovered, or a particular part thereof, (other than emission data) would result in methods or processes entitled to protection as trade secrets of such person being divulged, the Presiding Officer may enter a protective order with respect to such material. Any protective order shall contain such terms governing the treatment of the information as may be appropriate under the circumstances to prevent disclosure outside the hearing: *Provided,* That the order shall state that the material shall be filed separately from other evidence and exhibits in the hearing. Disclosure shall be limited to parties to the hearing, their counsel and relevant technical consultants, and authorized representatives of the United States concerned with carrying out the Act. Except in the case of the government, disclosure may be limited to counsel to parties who shall not disclose such information to the parties themselves. Except in the case of the government, disclosure to a party or his counsel shall be conditioned on execution of a sworn statement that no disclosure of the information will be made to persons not entitled to receive it under the terms of the protective order. (No such provision is necessary where government employees are concerned because disclosure by them is subject to the terms of 18 U.S.C. 1905.)

(2)(i) A party or person seeking a protective order may be permitted to make all or part of the required showing in camera. A record shall be made of such in camera proceedings. If the Presiding Officer enters a protective order following a showing in camera, the record of such showing shall be sealed and preserved and made available to the Agency or court in the event of appeal.

(ii) Attendance at any in camera proceeding may be limited to the Presiding Officer, the Agency, and the person or party seeking the protective order.

(3) Any party, subject to the terms and conditions of any protective order issued pursuant to paragraph (n)(1) of this section, desiring for the presentation of his/her case to make use of any in camera documents or testimony shall make application to the Presiding Officer by motion setting forth the justification therefor. The Presiding Officer, in granting any such motion, shall enter an order protecting the rights of the affected persons and parties and preventing unnecessary disclosure of such information, including the presentation of such information and oral testimony and cross-examination concerning it in executive session, as in his/her discretion is necessary and practicable.

(4) In the submittal of findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details in their presentations, such data shall be incorporated in separate findings, briefs, or other papers marked "confidential", which shall become part of the in camera record.

(o) *Motions.* (1) All motions, except those made orally during the course of the hearing, shall be in writing and shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the Hearing Clerk and served upon all parties.

(2) Within ten days after service of any motion filed pursuant to this section, or within such other time as may be fixed by the Environmental Appeals Board or the Presiding Officer, as appropriate, any party may serve and file an answer to the motion. The movant shall, if requested by the Environmental Appeals Board or the Presiding Officer, as appropriate, serve and file reply papers within the time set by the request.

(3) The Presiding Officer shall rule upon all motions filed or made prior to the filing of his decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed prior to the appointment of a Presiding Officer and all motions filed after the filing of the decision of the Presiding Officer or accelerated decision. Oral argument of motions will be permitted only if the Presiding Officer or the Environmental Appeals Board, as appropriate, deems it necessary.

(p) *Evidence.* (1) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. Documents or parts thereof subject to a protective order under paragraph (n) of this section shall be segregated. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The Presiding Officer shall allow the parties to examine and to cross-examine a witness to the extent that such examination and cross-examination is necessary for a full and true disclosure of the facts.

(3) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(4) Parties shall automatically be presumed to have taken exception to an adverse ruling.

(q) *Interlocutory appeal.* (1) An interlocutory appeal may be taken to the Environmental Appeals Board either:

(i) With the consent of the Presiding Officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest; or

(ii) Absent the consent of the Presiding Officer, by permission of the Environmental Appeals Board.

(2) Applications for interlocutory appeal of any ruling or order of the Presiding Officer may be filed with the Presiding Officer within 5 days of the issuance of the ruling or order being appealed. Answers thereto by other parties may be filed within 5 days of the service of such applications.

(3) The Presiding Officer shall rule on such applications within 5 days of the filing of such application or answers thereto.

(4) Applications to file such appeals absent consent of the Presiding Officer shall be filed with the Environmental Appeals Board within 5 days of the denial of any appeal by the Presiding Officer.

(5) The Environmental Appeals Board will consider the merits of the appeal on the application and any answers thereto. No oral argument will be heard nor other briefs filed unless the Environmental Appeals Board directs otherwise.

(6) Except under extraordinary circumstances as determined by the Presiding Officer, the taking of an interlocutory appeal will not stay the hearing.

(r) *Record.* (1) Hearings shall be stenographically reported and transcribed, and the original transcript shall be part of the record and the sole official transcript. Copies of the record shall be filed with the Hearing Clerk and made available during Agency business hours for public inspection. Any person desiring a copy of the record of the hearing or any part thereof shall be entitled to the same upon payment of the cost thereof.

(2) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

(s) *Findings, conclusions.* (1) Within 20 days of the close of the reception of evidence, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer findings of fact, conclusions of law, and a rule or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

(2) The record shall show the Presiding Officer's ruling on the findings and conclusions except when his/her order disposing of the proceeding otherwise informs the parties of the action taken by him/her thereon.

(t) *Decision of the Presiding Officer.* (1) Unless extended by the Environmental Appeals Board, the Presiding Officer shall issue and file with the Hearing Clerk his decision within 30 days after the period for filing findings as provided for in paragraph (s) of this section has expired.

(2) The Presiding Officer's decision shall become the opinion of the Environmental Appeals Board:

(i) When no notice of intention to appeal as described in paragraph (u) of this section is filed, 30 days after the issuance thereof, unless in the interim the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision; or

(ii) When a notice of intention to appeal is filed but the appeal is not perfected as required by paragraph (u) of this section, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Environmental Appeals Board shall have taken action to review or stay the effective date of the decision.

(3) The Presiding Officer's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record and an appropriate rule or order. Such decision shall be supported by substantial evidence and based upon a consideration of the whole record.

(4) At any time prior to the issuance of his decision, the Presiding Officer may reopen the proceeding for the reception of further evidence. Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the issuance of his/her decision.

(u) *Appeal from the decision of the Presiding Officer.* (1) Any party to a proceeding may appeal the Presiding Officer's decision to the Environmental Appeals Board, Provided, That within 10 days after issuance of the Presiding Officer's decision such party files a notice of intention to appeal and an appeal brief within 30 days of such decision.

(2) When an appeal is taken from the decision of the Presiding Officer, any party may file a brief with respect to such appeal. The brief shall be filed within 20 days of the date of the filing of the appellant's brief.

(3) Any brief filed pursuant to this paragraph (u) shall contain in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(ii) A specification of the issues intended to be urged;

(iii) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(iv) A form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the Presiding Officer's decision.

(4) No brief in excess of 40 pages shall be filed without leave of the Environmental Appeals Board.

(5) Oral argument will be allowed in the discretion of the Environmental Appeals Board.

(v) *Review of the Presiding Officer's decision in absence of appeal.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no notice of intention to appeal the decision of the Presiding Officer has been filed, or if filed, not perfected, the Hearing Clerk shall so notify the Environmental Appeals Board.

(2) The Environmental Appeals Board, upon receipt of notice from the Hearing Clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to paragraph (u) of this section, may, on its own motion, within the time limits specified in paragraph (t)(2) of this section, review the decision of the Presiding Officer. Notice of the intention of the Environmental Appeals Board to review the decision of the Presiding Officer shall be given to all parties and shall set forth the scope of such review and the issue which shall be considered and shall make provision for filing of briefs.

(w) *Decision on appeal or review.* (1) Upon appeal from or review of the Presiding Officer's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which it could have exercised if it had presided at the hearing.

(2) In rendering its decision, the Environmental Appeals Board shall adopt, modify, or set aside the findings,

conclusions, and rule or order contained in the decision of the Presiding Officer and shall set forth in its decision a statement of the reasons or bases for its action.

(3) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the Presiding Officer.

(x) *Reconsideration.* Within twenty (20) days after issuance of the Environmental Appeals Board's decision, any party may file with the Environmental Appeals Board a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this paragraph (x) must be confined to new questions raised by the decision or the final order and upon which the petitioner had no opportunity to argue before the Presiding Officer or the Environmental Appeals Board. Any party desiring to oppose such a petition shall file and answer thereto within ten (10) days after the filing of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order or to toll the running of any statutory time period affecting such decision or order unless specifically so ordered by the Environmental Appeals Board.

(y) *Accelerated decision: Dismissal.* (1) The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the manufacturer or remanufacturer as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he/she may require, or dismiss any party with prejudice, under any of the following conditions:

(i) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(ii) There is no genuine issue of material fact and a party is entitled to judgment as a matter of law; or

(iii) Such other and further reasons as are just, including specifically failure to obey a procedural order of the Presiding Officer.

(2) If under this paragraph (y) an accelerated decision is issued as to all the issues and claims joined in the proceeding, the decision shall be treated for the purposes of these procedures as the decision of the Presiding Officer as provided in paragraph (p) of this section.

(3) If under this paragraph (y), judgment is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He/she shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no appeal has been taken from the Presiding Officer's decision, and, after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (u) of this section, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

(aa) *Judicial review.* (1) The Administrator hereby designates the Deputy General Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

Subpart I—Importation of Nonconforming Locomotives and Locomotive Engines

§ 92.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of locomotives or locomotive engines for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which locomotives or locomotive engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming locomotives or locomotive engines as defined in § 92.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of locomotives and locomotive engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR chapter I).

§ 92.802 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.803 Admission.

A nonconforming locomotive or locomotive engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. In order to obtain admission the importer must submit to the Administrator a written request for approval containing the following:

(a) Identification of the importer of the locomotive or locomotive engine and the importer's address, telephone number, and taxpayer identification number;

(b) Identification of the locomotive's or locomotive engine's owner, the owner's address, telephone number, and taxpayer identification number;

(c) Identification of the locomotive and/or locomotive engine including make, model, identification number, and original production year;

(d) Information indicating the provision in this subpart under which the locomotive or locomotive engine is to be imported;

(e) Identification of the place(s) where the locomotive or locomotive engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(f) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(g) Such other information as is deemed necessary by the Administrator.

§ 92.804 Exemptions.

(a) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(b) Notwithstanding other requirements of this subpart, a

nonconforming locomotive or locomotive engine that qualifies for a temporary exemption under this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the identification required in § 92.803 and information that demonstrates that the locomotives and or locomotive engines qualify for an exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond and/or exportation of the locomotive or locomotive engine. The following temporary exemptions are permitted by this paragraph (b):

(1) *Exemption for repairs or alterations.* Upon written approval by EPA, a person may conditionally import under bond a nonconforming locomotive or locomotive engine solely for purpose of repair(s) or alteration(s). The locomotive or locomotive engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A nonconforming test locomotive or locomotive engine may be conditionally imported by a person subject to the requirements of § 92.905. A test locomotive or locomotive engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the locomotive or locomotive engine in accordance with § 92.905 for a subsequent one-year period.

(3) *Display exemptions.* (i) A nonconforming locomotive or locomotive engine intended solely for display may be conditionally imported under bond subject to the requirements of § 92.906(b).

(ii) A display locomotive or locomotive engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of a locomotive or locomotive engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display locomotive or locomotive engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) National security exemption. Notwithstanding any other requirement of this subpart, a locomotive or locomotive engine may be permanently imported into the United States under the national security exemption found at § 92.908, if prior written approval for such permanent importation is obtained from the Administrator. A request for approval is to contain the identification information required in § 92.803 and information that demonstrates that the importer is entitled to the exemption.

(d) An application for exemption provided for in paragraphs (b) and (c) of this section shall be mailed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., S.W., Washington, D.C. 20460, Attention: Imports.

(e) Incidental use exemption. Locomotives that are operated primarily outside of the United States, and that enter the United States temporarily from Canada or Mexico are exempt from the requirements and prohibitions of this part without application, provided that the operation within the United States is not extensive and is incidental to their primary operation.

§ 92.805 Prohibited acts; penalties.

(a) The importation of a locomotive or locomotive engine which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a locomotive or locomotive engine may not:

(1) Operate the locomotive or locomotive engine in the United States;

(2) Sell or lease or offer the locomotive or locomotive engine for sale or lease.

(c) A locomotive or locomotive engine conditionally admitted pursuant to § 92.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the locomotive or locomotive engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. A locomotive or locomotive engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 92.1106. In addition to the penalty provided in the Act and § 92.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 92.804 and, who fails to deliver the locomotive or locomotive engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 92.901 Purpose and applicability.

The provisions of this subpart identify excluded locomotives (i.e., locomotives not covered by the Act) and allow for the exemption of locomotives and locomotive engines from certain provisions of this part. The applicability of the exclusions is described in § 92.903, and the applicability of the exemption allowances is described in §§ 92.904 through 92.909.

§ 92.902 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain locomotives are excluded from applicability of this part. Any locomotives that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain locomotives are excluded should be sent to: Group

Mahager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403–J, 401 M St., SW, Washington, D.C. 20460.

(b) EPA will maintain a list of models of locomotives that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the locomotives excluded in paragraph (a) of this section, certain vehicles are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of "locomotive" and/or "new locomotive" in § 92.2.

§ 92.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 92.904 through 92.911 exempt certain new locomotives and new locomotive engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 92.1104.

(b)(1) Any person may request a testing exemption subject to the provisions of § 92.905.

(2) Any locomotive or locomotive engine manufacturer or remanufacturer may request a national security exemption subject to the provisions of § 92.908.

(3) Locomotive or locomotive engines manufactured or remanufactured for export purposes are exempt without application, subject to the provisions of § 92.909, except as otherwise specified by § 92.909.

(4) Manufacturer-owned and remanufacturer-owned locomotive or locomotive engines are exempt without application, subject to the provisions of § 92.906(a).

(5) Display locomotive or locomotive engines are exempt without application, subject to the provisions of § 92.906(b).

(6) Locomotive propulsion engines that are identical to engines that are covered by a certificate of conformity issued under 40 CFR part 89, and the locomotives in which they are used, are exempt, subject to the provisions of § 92.907.

§ 92.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new locomotives or new locomotive engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 92.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of locomotives or locomotive engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time, work, or mileage duration of the testing;

(4) The ownership arrangement with regard to the locomotives and engines involved in the testing;

(5) The intended final disposition of the locomotives and engines;

(6) The manner in which the locomotive or engine identification numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer or remanufacturer of new locomotives or locomotive engines may request a testing exemption to cover locomotives or locomotive engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer or remanufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the locomotives or locomotive engines are used for purposes consistent with paragraph (a) of this section.

(g) For locomotives being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the locomotive from some or all of the applicable standards of this part for the full useful life of the locomotive, subject to the provisions of paragraphs (a) through (f) of this section.

§ 92.906 Manufacturer-owned, remanufacturer-owned exemption and display exemption.

(a) Any manufacturer-owned or remanufacturer-owned locomotive or locomotive engine, as defined by § 92.2, is exempt from § 92.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer or remanufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted locomotive or locomotive engine:

(i) Locomotive or engine identification number;

(ii) Use of the locomotive or engine on exempt status; and

(iii) Final disposition of any locomotive or engine removed from exempt status.

(2) The manufacturer or remanufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in § 92.208.

(3) The manufacturer or remanufacturer must permanently affix a label to each locomotive or locomotive engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director,

Engine Programs and Compliance Division. This label should:

(i) Be affixed in a readily visible portion of the locomotive or locomotive engine;

(ii) Be attached in such a manner that cannot be removed without destruction or defacement;

(iii) State in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information";

(B) Full corporate name and trademark of manufacturer or remanufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement "This locomotive or locomotive engine is exempt from the prohibitions of 40 CFR 92.1103."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer or remanufacturer from including any other information it desires on the label.

(5) The locomotive or locomotive engine is not used in revenue-generating service, or sold.

(b) Display exemption. An uncertified locomotive or locomotive engine that is to be used solely for display purposes, and that will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been obtained for the locomotive or engine, is exempt without request from the standards of this part.

§ 92.907 Non-locomotive-specific engine exemption.

(a) For manufacturers selling non-locomotive-specific engines to be used as propulsion engines in remanufactured locomotives, such locomotives and engines are exempt, provided:

(1) The engines are covered by a certificate of conformity issued under 40 CFR part 89;

(2) More engines are reasonably projected to be sold and used under the certificate for non-locomotive use than for use in locomotives;

(3) The number of such engines exempted under this paragraph (a) does not exceed 25 per manufacturer in any calendar year;

(4) The Administrator has approved the exemption as specified in paragraph (e) of this section.

(b) For manufacturers of freshly manufactured switch locomotives powered by non-locomotive-specific engines, such freshly manufactured switch locomotives are exempt, provided:

(1) The engines are covered by a certificate of conformity issued under 40 CFR part 89;

(2) More engines are reasonably projected to be sold and used under the certificate for non-locomotive use than for use in locomotives;

(3) The number of such locomotives sold within any three-year period by the manufacturer, and exempted under this paragraph (b) does not exceed 15; and

(4) The Administrator has approved the exemption as specified in paragraph (e) of this section.

(c)(1) The remanufacture of locomotive engines that have been exempted under this section is exempt without request provided that the remanufacturer remanufactures them to a previously-certified configuration, or to be equivalent to engines that have been previously certified under this part or 40 CFR part 89.

(2) The remanufacture of non-locomotive-specific engines that were used in locomotives prior to January 1, 2000 is exempt from the requirements of this part provided: The remanufacturer remanufactures them to be equivalent to engines that have been previously certified under this part or 40 CFR part 89, or demonstrates that the NO_x emissions from the remanufactured locomotive engine are at least 40 percent less than its emissions prior to certification; and the Administrator has approved the exemption as specified in paragraph (e) of this section.

(d) Manufacturers and remanufacturers of engines and/or locomotives exempted under this section shall:

(1) Report annually to EPA the number of engines exempted under paragraph (a) of this section;

(2) Report annually to EPA the number of locomotives exempted under paragraph (b) of this section; and

(3) Upon the Administrator's request, provide test data showing the emissions of the engine or locomotive when it is operated at the actual in-use locomotive power points.

(e)(1) Manufacturers and remanufacturers seeking an exemption under this section shall notify the Administrator of such intent at least 90 days prior to selling or placing into service the locomotives or locomotive engines.

(2) The Administrator shall deny a non-locomotive-specific exemption in any case where he/she has evidence that approving such an exemption would be inappropriate because of adverse environmental or economic impacts.

(3) When denying an exemption, the Administrator shall notify the manufacturer or remanufacturer of EPA's decision to deny or consider denying the exemption within 60 days of the manufacturer's or remanufacturer's notification in paragraph (e)(1) of this section.

(4) Unless the Administrator notifies the manufacturer or remanufacturer of EPA's decision to deny or consider denying the exemption within 60 days of the manufacturer's or remanufacturer's notification in paragraph (e)(1) of this section, the exemption shall be considered approved 90 days of the manufacturer's or remanufacturer's notification.

§ 92.908 National security exemption.

A manufacturer or remanufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

§ 92.909 Export exemptions.

(a) A new locomotive or locomotive engine intended solely for export, and so labeled or tagged on the outside of any container, the locomotive and on the engine itself, is subject to the provisions of § 92.1103, unless the importing country has new locomotive or new locomotive engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void *ab initio* with respect to a new locomotive or locomotive engine intended solely for export, where such locomotive or locomotive engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 92.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 92.905 or § 92.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and

conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt locomotives or engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the locomotives or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject locomotive or engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void ab initio with respect to any locomotive or engine. Consequently, the causing or the performing of an act prohibited under § 92.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 92.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

§ 92.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division U.S. Environmental Protection Agency, 6403-J, 401 M St., S.W., Washington, D.C. 20460.

Subpart K—Requirements Applicable to Owners and Operators of Locomotives and Locomotive Engines

§ 92.1001 Applicability.

The requirements of this subpart are applicable to railroads and all other owners and operators of locomotives and locomotive engines subject to the provisions of subpart A of this part, except as otherwise specified.

§ 92.1002 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.1003 In-use testing program.

(a) *Applicability.* This section applies to all Class I freight railroads, beginning on January 1, 2005.

(b) *Testing requirements.* Each railroad subject to the provisions of this section shall annually test a sample of locomotives in its fleet. For the purpose of this section, a railroad's fleet includes both the locomotives that it owns and the locomotives that it is leasing.

(1)(i) Except as specified in paragraphs (b)(1)(ii) and (iii) of this section, the number of locomotives to be tested shall be at least 0.15 percent of the average number of locomotives in the railroad's fleet during the previous calendar year (i.e., the number tested shall be 0.0015 multiplied by the number of locomotives in the fleet, rounded up to the next whole number).

(ii) After December 31, 2015, the number of locomotives to be tested by railroads with 500 or more locomotives shall be at least 0.10 percent of the average number of locomotives in the railroad's fleet during the previous calendar year (i.e., the number tested shall be 0.0010 multiplied by the number of locomotives in the fleet, rounded up to the next whole number). After December 31, 2015, the number of locomotives to be tested by railroads with fewer than 500 locomotives shall be zero. The provisions of this paragraph (b)(1)(ii) apply only when:

(A) No new locomotive emission standards have taken effect during the previous 5 years;

(B) Locomotive emission controls have not changed fundamentally, during the previous 5 years, in any manner that could reasonably be expected to have the potential to significantly affect emissions durability; and

(C) Testing during the previous 5 years has shown, to the satisfaction of the Administrator, that the degree of noncompliance for tested locomotives is low enough that the higher rate of testing specified in paragraph (b)(1)(i) of this section is not needed.

(iii) The Administrator may allow a railroad to perform a smaller number of tests than specified in paragraphs (b)(1)(i) or (ii) of this section, where he/she determines that the number of tests specified in paragraphs (b)(1)(i) or (ii) of this section is not necessary.

(2) Testing shall be performed according to the test procedures in subpart B of this part, unless otherwise approved by the Administrator.

(c) *Test locomotive selection.* (1)(i) A representative sample of locomotives shall be randomly selected for testing.

(ii) Unless otherwise specified by the Administrator, the selection shall be made by the railroad.

(iii) The railroad shall select locomotives from each manufacturer and remanufacturer, and from each tier level (e.g., Tier 0, Tier 1 and Tier 2) in proportion to their numbers in the railroad's fleet, except where specified or allowed otherwise by the Administrator.

(iv) Locomotives tested during the previous year shall be excluded from the sample.

(v) Locomotives may not be excluded from the sample because of visible smoke, a history of durability problems, or other evidence of malmaintenance.

(2)(i) Locomotives selected for testing according to the provisions of this section shall have been certified in compliance with requirements in subpart A of this part, and shall have been operated for at least 100 percent of their useful lives.

(ii) Where the number of locomotives that have been operated for at least 100 percent of their useful lives is not large enough to fulfill the testing requirement, locomotives still within their useful lives shall be tested. In this case, the locomotives must have been operated longer than at least 80 percent of the locomotives in the railroad's fleet.

(3) Where specified by the Administrator, the railroad shall test specified locomotives in its fleet, including locomotives that do not meet the criteria specified in paragraph (c)(2) of this section.

(d) *Reporting requirements.* All testing done in compliance with the provisions of this section shall be reported to EPA within thirty calendar days of the end of each year. At a minimum, each report shall contain the following:

(1) Full corporate name and address of the railroad providing the report.

(2) For each locomotive tested, the following:

(i) Corporate name of the manufacturer and last remanufacturer(s) (including both certificate holder and installer, where different) of the locomotive, and the corporate name of the manufacturer or last remanufacturer(s) of the engine if different than that of the manufacturer or remanufacturer(s) of the locomotive;

(ii) Year, and if known month of original manufacture of the locomotive and the engine, and the manufacturer's model designation of the locomotive and manufacturer's model designation of the engine, and the locomotive identification number;

(iii) Year, and if known month that the engine last underwent remanufacture, and the engine remanufacturer's designation which either reflects, or most closely reflects, the engine after the last remanufacture, and the engine family identification;

(iv) The number of MW-hrs and miles (where available) the locomotive has been operated since its last remanufacture; and

(v) The emission test results for all measured pollutants.

(e) Any railroad that performed no emission testing during a given year is exempt from the reporting requirements described in paragraph (d) of this section for that year.

(f) In lieu of some or all of the test data required by this section, railroads may submit equivalent emission data collected for other purposes. The Administrator may also allow emission data collected using other testing or sampling procedures to be submitted in lieu of some or part of the data required by this section with advance approval.

(g) All reports submitted to EPA in compliance with the provisions of this subpart must be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division 6403–J, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

§ 92.1004 Maintenance and repair.

(a) Unless otherwise approved by the Administrator, all owners of locomotives subject to the provisions of this part shall ensure that all emission-related maintenance is performed on the locomotives, as specified in the maintenance instructions provided by the certifying manufacturer or remanufacturer in compliance with § 92.211 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer or remanufacturer in terms of maintaining emissions performance).

(b) Unless otherwise approved by the Administrator, all maintenance and repair of locomotives and locomotive engines subject to the provisions of this part performed by any owner, operator or other maintenance provider, including maintenance that is not covered by paragraph (a) of this section, shall be performed, using good engineering judgement, in such a manner that the locomotive or locomotive engine continues (after the maintenance or repair) to the meet the emission standards or family emission limits (as applicable) it was certified as meeting prior to the need for maintenance or repair.

(c) The owner of the locomotive shall maintain records of all maintenance and repair that could reasonably affect the emission performance of any locomotive or locomotive engine subject to the provision of this part.

§ 92.1005 In-use locomotives.

(a)(1) Any Class I railroad subject to the provisions of this subpart shall supply to the Administrator, upon request, in-use locomotives, selected by the Administrator. The number of locomotives which the Administrator requests under this paragraph (a)(1) shall not exceed five locomotives per railroad per calendar year. These locomotives or engines shall be supplied for testing at such reasonable time and place and for such reasonable periods as the Administrator may require. The Administrator shall make reasonable allowances to the railroad to schedule the supply of locomotives for testing in such a manner that it minimizes disruption of its operational schedule.

(2) Any non-Class I railroad or other entity subject to the provisions of this subpart shall supply to the Administrator, upon request, in-use locomotives, selected by the Administrator. The number of locomotives which the Administrator requests under this paragraph (a)(2) shall not exceed two locomotives per railroad (or other entity) per calendar year. These locomotives or engines shall be supplied for testing at such reasonable time and place and for such reasonable periods as the Administrator may require. The Administrator shall make reasonable allowances to the railroad or other entity to schedule the supply of locomotives for testing in such a manner that it minimizes disruption of its operational schedule. The Administrator shall request locomotives under this paragraph (a)(2) only for purposes which cannot be accomplished using locomotives supplied under paragraph (a)(1) of this section.

(b) Any railroad or other entity subject to the provisions of this subpart shall make reasonable efforts to supply manufacturers and remanufacturers of locomotives and locomotive engines with the test locomotives and locomotive engines needed to fulfill the in-use testing requirements contained in subpart G of this part.

§ 92.1006 Refueling requirements.

(a) Refueling equipment used by a locomotive operator for locomotives fueled with a volatile fuel shall be designed in such a manner so as not to render inoperative or reduce the effectiveness of the controls on the locomotive that are intended to minimize the escape of fuel vapors.

(b) Hoses used to refuel gaseous-fueled locomotives shall not be designed to be bled or vented to the atmosphere under normal operating conditions.

Subpart L—General Enforcement Provisions and Prohibited Acts

§ 92.1101 Applicability.

The requirements of this subpart are applicable to all manufacturers, remanufacturers, owners and operators of locomotives and locomotive engines subject to the provisions of subpart A of this part.

§ 92.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i)(A) In the case of a manufacturer or remanufacturer of new locomotives or new locomotive engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new locomotive or new locomotive engine manufactured or remanufactured after the effective date of applicable emission standards under this part, unless such locomotive or locomotive engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part. (Introduction into commerce includes placement of a new locomotive or new locomotive engine back into service following remanufacturing.)

(B) The manufacture or remanufacture of a locomotive or locomotive engine for the purpose of an act listed in paragraph (a)(1)(i)(A) of this section unless such locomotive or locomotive engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part prior to its introduction into commerce.

(ii) In the case of any person, except as provided in Subpart I of this part, the importation into the United States of any locomotive or locomotive engine manufactured or remanufactured after June 15, 1998, unless such locomotive or locomotive engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this part.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under this part.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under this part.

(3)(i) For a person to remove or render inoperative a device or element of

design installed on or in a locomotive or locomotive engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer or remanufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, remanufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a locomotive or locomotive engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a locomotive or locomotive engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) For a locomotive owner or operator to fail to comply with the maintenance and repair requirements of § 92.1004.

(4) For a manufacturer or a remanufacturer of a new locomotive or locomotive engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new locomotive or new locomotive engine unless the manufacturer or remanufacturer has complied with the requirements of § 92.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new locomotive or new locomotive engine unless all required labels and tags are affixed to the engine in accordance with § 92.212.

(iii) To fail or refuse to comply with the requirements of § 92.1108.

(iv) Except as provided in § 92.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or remanufacturer or a person acting for the manufacturer or remanufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 92.1107.

(5) For a manufacturer or remanufacturer of locomotives to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce new locomotives (including all locomotives which contain a new engine) not covered by a certificate of conformity.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's or remanufacturer's parts in maintaining or repairing a locomotive or locomotive engine.

(2) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design.

(3) Actions for the purpose of remanufacturing a locomotive are not considered prohibited acts under paragraph (a)(3)(i) of this section if the new remanufactured locomotive is covered by a certificate of conformity and complies with all applicable requirements of this part.

§ 92.1104 General enforcement provisions.

(a) *Information collection provisions.* (1)(i) Every manufacturer or remanufacturer of new locomotives and/or new locomotive engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or remanufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer or remanufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer, remanufacturer, owner, or operator of locomotives or locomotive engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such locomotives or locomotive engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer or remanufacturer, or of any person whom the manufacturer or remanufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or remanufacturer or by a person whom the manufacturer or remanufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new locomotive or new locomotive engine from § 92.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new locomotive or locomotive engine, offered for importation or imported by a person in violation of § 92.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a locomotive or locomotive engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the locomotive or locomotive engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a locomotive or locomotive engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new locomotive or locomotive engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new locomotive or locomotive engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine,

shall be subject to the provisions of § 92.1103, except that if the country that is to receive the locomotive or locomotive engine has emission standards that differ from the standards prescribed under subpart A of this part, then the locomotive or locomotive engine must comply with the standards of the country that is to receive the locomotive or locomotive engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§ 92.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 92.1103(a).

(b) Actions to restrain violations of § 92.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 92.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 92.1103(a)(1), (a)(4), or (a)(5), or a manufacturer, remanufacturer, dealer or railroad who violates § 92.1103(a)(3)(i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act (31 U.S.C. 3701 *et seq.*) and/or regulations issued thereunder.

(2) A person other than a manufacturer, remanufacturer, dealer, or railroad who violates § 92.1103(a)(3)(i) or any person who violates § 92.1103(a)(3)(ii) is subject to a civil penalty of not more than $2,500 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(3) A violation with respect to § 92.1103(a)(1), (a)(3)(i), (a)(3)(iii), (a)(4), or (a)(5) constitutes a separate offense with respect to each locomotive or locomotive engine.

(4) A violation with respect to § 92.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 92.1103(a)(5) constitutes a separate offense.

(5) A person who violates § 92.1103(a)(2) or (a)(5) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph (b) may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph (b), the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.* (1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at part 22 of this chapter. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this paragraph (c), the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph (c) does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph (c), or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph (c) shall affect a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this paragraph (c) is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* A person against whom a civil penalty is assessed in accordance with this paragraph (c) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph (c) unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of

the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

§ 92.1107 Warranty provisions.

(a) The manufacturer or remanufacturer of each locomotive or locomotive engine must warrant to the ultimate purchaser and each subsequent purchaser or owner that the locomotive or locomotive engine is designed, built, and equipped so as to conform at the time of sale or time of return to service following remanufacture with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such locomotive or locomotive engine to fail to conform with applicable regulations for its warranty period (as determined under § 92.10).

(b) For the purposes of this section, the owner of any locomotive or locomotive engine warranted under this part is responsible for the proper maintenance of the locomotive and the locomotive engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with locomotives or locomotive engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

§ 92.1108 In-use compliance provisions.

(a) Effective with respect to locomotives and locomotive engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of locomotives or locomotive engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under § 92.2), the Administrator shall immediately notify the manufacturer or remanufacturer of such nonconformity and require the manufacturer or remanufacturer to submit a plan for remedying the nonconformity of the locomotives or locomotive engines with respect to which such notification is given.

(i) The manufacturer's or remanufacturer's plan shall provide that the nonconformity of any such locomotives or locomotive engines which are properly used and maintained will be remedied at the expense of the manufacturer or remanufacturer.

(ii) If the manufacturer or remanufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer or remanufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer or remanufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer or remanufacturer shall comply in all respects with the requirements of subpart G of this part.

(2) Any notification required to be given by the manufacturer or remanufacturer under paragraph (a)(1) of this section with respect to any class or category of locomotives or locomotive engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in Subparts E and H of this part.

(3)(i) The certifying manufacturer or remanufacturer shall furnish with each new locomotive or locomotive engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 92.211.

(ii) The instruction under paragraph (a)(3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such locomotive or locomotive engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer or remanufacturer, or any other service establishments with which such manufacturer or remanufacturer has a commercial relationship, and service performed by independent locomotive or locomotive engine repair facilities with which such manufacturer or remanufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer or remanufacturer satisfies the Administrator that the locomotive or locomotive engine will function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer or remanufacturer shall indicate by means of a label or tag permanently affixed to the locomotive and to the engine that the locomotive and/or the locomotive engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 92.212.

(b) The manufacturer or remanufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer or remanufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer or remanufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer or remanufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer or remanufacturer as the Comptroller General has to those of a recipient of

assistance for purposes of section 311 of the Act.

Appendices to Part 92

Appendix I to Part 92—Emission Related Locomotive and Engine Parameters and Specifications

I. Basic Engine Parameters—Reciprocating Engines.
1. Compression ratio.
2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
3. Valves (intake and exhaust).
a. Head diameter dimension.
b. Valve lifter or actuator type and valve lash dimension.
4. Camshaft timing.
a. Valve opening—intake exhaust (degrees from TDC or BDC).
b. Valve closing—intake exhaust (degrees from TDC or BDC).
c. Valve overlap (degrees).
5. Ports—two stroke engines (intake and/or exhaust).
a. Flow area.
b. Opening timing (degrees from TDC or BDC).
c. Closing timing (degrees from TDC or BDC).

II. Intake Air System.
1. Roots blower/supercharger/turbocharger calibration.
2. Charge air cooling.
a. Type (air-to-air; air-to-liquid).
b. Type of liquid cooling (engine coolant, dedicated cooling system).
c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80 °F and 110 °F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
3. Temperature control system calibration.
4. Maximum allowable inlet air restriction.

III. Fuel System.
1. General.
a. Engine idle speed.
2. Carburetion.
a. Air-fuel flow calibration.
b. Idle mixture.
c. Transient enrichment system calibration.
d. Starting enrichment system calibration.
e. Altitude compensation system calibration.
f. Hot idle compensation system calibration.
3. Fuel injection—non-compression ignition engines.
a. Control parameters and calibrations.
b. Idle mixture.
c. Fuel shutoff system calibration.
d. Starting enrichment system calibration.
e. Transient enrichment system calibration.
f. Air-fuel flow calibration.
g. Altitude compensation system calibration.
h. Operating pressure(s).
i. Injector timing calibration.
4. Fuel injection—compression ignition engines.
a. Control parameters and calibrations.
b. Transient enrichment system calibration.
c. Air-fuel flow calibration.
d. Altitude compensation system calibration.
e. Operating pressure(s).
f. Injector timing calibration.

IV. Ignition System—non-compression ignition engines.
1. Control parameters and calibration.
2. Initial timing setting.
3. Dwell setting.
4. Altitude compensation system calibration.
5. Spark plug voltage.

V. Engine Cooling System.
1. Thermostat calibration.

VI. Exhaust System.
1. Maximum allowable back pressure.

VII. Exhaust Emission Control System.
1. Air injection system.
a. Control parameters and calibrations.
b. Pump flow rate.
2. EGR system.
a. Control parameters and calibrations.
b. EGR valve flow calibration.
3. Catalytic converter system.
a. Active surface area.
b. Volume of catalyst.
c. Conversion efficiency.
4. Backpressure.

VIII. Crankcase Emission Control System.
1. Control parameters and calibrations.
2. Valve calibrations.

IX. Auxiliary Emission Control Devices (AECD).
1. Control parameters and calibrations.
2. Component calibration(s).

X. Evaporative Emission Control System.
1. Control parameters and calibrations.
2. Fuel tank. a. Volume.
b. Pressure and vacuum relief settings.

Appendix II to Part 92—Interpretive Ruling for § 92.705—Remedial Plans

The following is an interpretive ruling set forth previously by EPA for on-highway vehicles. EPA expects to apply the same principles to locomotives.

(1) The purpose of this ruling is to set forth EPA's interpretation regarding one aspect of a motor vehicle or motor vehicle engine manufacturer's recall liability under section 207(c)(1) of the Clean Air Act, 42 U.S.C. 7641(c)(1). This ruling will provide guidance to vehicle and engine manufacturers to better enable them to submit acceptable remedial plans.

(2) Section 207(c)(1) requires the Administrator to base a recall order on a determination that a substantial number of in-use vehicles or engines within a given class or category of vehicles or engines, although properly maintained and used, fail to conform to the regulations prescribed under section 202 when in actual use throughout their useful lives. After making such a determination, he shall require the manufacturer to submit a plan to remedy the nonconformity of any such vehicles or engines. The plan shall provide that the manufacturer will remedy, at the manufacturer's expense, all properly maintained and used vehicles which experienced the nonconformity during their useful lives regardless of their age or mileage at the time of repair.

Appendix III to Part 92—Smoke Standards for Non-Normalized Measurements

TABLE III–1.—EQUIVALENT SMOKE STANDARDS FOR NON-NORMALIZED MEASUREMENTS

Path length		Standards				
If the path length is:		Then the opacity may not exceed:				
		Peak		Steady-State		
cm	inches	3-sec	30-sec	Tier 0	Tier 1	Tier 2
10.0–19.9	3.94–7.86	7	5	4	3	2
20.0–29.9	7.87–11.80	13	10	7	6	4
30.0–39.9	11.81–15.74	19	14	10	8	6
40.0–49.9	15.75–19.68	24	18	13	11	9
50.0–59.9	19.69–23.61	29	23	16	13	11
60.0–69.9	23.62–27.55	34	26	19	16	13
70.0–79.9	27.56–31.49	38	30	22	18	14
80.0–89.9	31.50–35.42	43	34	25	21	16
90.0–99.9	35.43–39.36	46	37	27	23	18
100.0–109.9	39.37–43.30	50	40	30	25	20
110.0–119.9	43.31–47.23	53	43	32	27	22
120.0–129.9	47.24–51.17	56	46	35	29	23
130.0–139.9	51.18–55.11	59	49	37	31	25
140.0–149.9	55.12–59.05	62	51	39	33	27
150.0–159.9	59.06–62.98	65	54	41	35	28

TABLE III–1.—EQUIVALENT SMOKE STANDARDS FOR NON-NORMALIZED MEASUREMENTS—Continued

Path length		Standards				
If the path length is:		Then the opacity may not exceed:				
		Peak		Steady-State		
cm	inches	3-sec	30-sec	Tier 0	Tier 1	Tier 2
160.0–169.9	62.99–66.92	67	56	43	37	30
170.0–179.9	66.93–70.86	69	58	45	39	32
180.0–189.9	70.87–74.79	71	60	47	40	33
190.0–199.9	74.80–78.73	73	62	49	42	35
≥200	≥78.74	75	64.	51	44	36

Appendix IV to Part 92—Guidelines for Determining Equivalency Between Emission Measurement Systems

This appendix describes a series of correlation criteria that EPA considers to be reasonable for the purpose of demonstrating equivalency between two test systems designed to measure the same emissions during FTP locomotive testing. These criteria are presented here only as guidelines. When requested to make a finding of equivalency, EPA could base its decision on criteria other than those listed here, where EPA has reason to believe that these criteria are not appropriate.

(a) *General approach.* (1) Multiple tests should be conducted in pairs on the same locomotive or engine using each of the measurement systems.

(2) Variations for other parameters, such as test fuel, should be minimized to the maximum extent possible.

(3) Locomotive and/or locomotive engine tests conducted in accordance with the provisions of Subpart B of this part are preferred. Where appropriate, engine tests conducted in accordance with 40 CFR part 89 may also be used.

(4) Equivalency of the systems should be determined by comparing individual modal data, individual cycle-weighted data, and the average cycle-weighted results from each system.

(b) *Correlation criteria for particulate measurements.* (1) The correlation coefficient (R^2) for individual modal data should be 0.90, or higher.

(2) The maximum deviation between any pair of cycle-weighted data should be 15 percent, or less.

(3) The ratio of average cycle-weighted results using the alternate system to the average cycle-weighted results using the specified Part 92 system (i.e., avg_{alt}/avg_{spc}) should be between 0.97 and 1.05.

(c) *Correlation criteria for other measurements.* Correlation parameters for gaseous pollutants should be better than those specified in paragraph (b) of this appendix for particulate measurements.

(d) *Minimum number of tests.* The recommended minimum number of tests with each system necessary to determine equivalency is:

(1) Four 13-mode locomotive or locomotive engine tests, conducted in accordance with the provisions of subpart B of this part; or

(2) Seven 8-mode nonroad engine tests, conducted in accordance with the provisions of 40 CFR part 89.

(e) *Statistical outliers.* Statistical outliers may be excluded consistent with good engineering judgement. Outliers should be replaced by rerunning each excluded test point. Where more than one outlier is excluded, is recommended to perform one additional pair of tests (in addition to the minimum number specified in paragraph (d) of this appendix) for each two outliers excluded.

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Part III

Department of Education

Migrant Education Even Start Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.214A]

Migrant Education Even Start Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

AGENCY: Department of Education.

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

The Migrant Education Even Start (MEES) Program is designed to help break the cycle of poverty and improve the literacy of participating migrant families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program.

Eligible Applicants

While any entity is eligible to apply for a grant under the MEES program, the Secretary specifically invites applications from State educational agencies (SEAs) that administer Migrant Education Programs; local educational agencies (LEAs) that have a high percentage of migrant students; and non-profit community-based organizations that work with migrant families.

Deadline for Transmittal of Applications: June 1, 1998.

Deadline for Intergovernmental Review: July 31, 1998.

Available Funds: For FY 1998, $3,720,000 is available for this program.

The amount of funding available to begin new projects is approximately $1,200,000.

Estimated Range of Awards: $88,000–$270,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Maximum Award: The Secretary will not consider an application that proposes a budget exceeding $270,000 for each 12-month budget period.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The definitions of a migratory child, a migratory agricultural worker, and a migratory fisher contained in 34 CFR 200.40.

Description of Program

Under the authority of section 1202(a)(1)(A) of the Elementary and Secondary Education Act (ESEA), as amended, the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants under the MEES Program for projects that—

(1) Improve the educational opportunities of migrant families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program;

(2) Implement cooperative activities that build on existing community resources to create a new range of services to migrant families;

(3) Promote achievement of the National Education Goals (section 102 of the Goals 2000 Educate America Act) especially goals one (school readiness), six (adult literacy), and eight (parent involvement and participation); and

(4) Assist children and adults from migrant families to achieve challenging State content standards and challenging State student performance standards.

Required Program Elements

(a)(1) *Eligible participants.* Eligible MEES participants consist of migratory children and their parents as defined in §§ 200.30 and 200.40 who also meet the following conditions specified in section 1206(a) of the ESEA:

(2) The parent or parents—

(i) Are eligible for participation in an adult basic education program under the Adult Education Act; or

(ii) Are within the State's compulsory school attendance age range, so long as a local educational agency provides (or ensures the availability of) the basic education component required under this part; and

(3) The child or children must be younger than eight years of age.

Note: Family members of eligible participants described in paragraphs one through three, above, also may participate in MEES activities when appropriate to serve Even Start purposes. In addition, section 1206(b) of the ESEA permits families to remain eligible for MEES services until all family members become ineligible to participate. For example, in the case of a family in which the parent or parents lose eligibility because of their educational advancement, the parent or parents can still participate in MEES activities until all children in the family reach age eight. In addition, the Department interprets 34 CFR 200.30 together with section 1206(b) of ESEA to mean that MEES services can continue to be provided to a parent or child who is no longer migratory provided that the family has at least one parent or child who is a migratory worker or child as defined under 34 CFR 200.40.

(b) *Required program elements.* Any MEES project must, at a minimum, incorporate the following program elements specified in section 1205 of the ESEA:

- Identification and recruitment of migrant families most in need of MEES services, as indicated by a low level of income, a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators;
- Screening and preparation of parents, including teenage parents and children, to enable these parents to participate fully in program activities and services, including testing, referral to counseling, other developmental and support services and related services;
- The provision of MEES services to those migrant families most in need of project services and activities;
- High-quality instructional programs that promote adult literacy and empower parents to support the educational growth of their children, with developmentally appropriate early childhood educational services, and the preparation of children for success in the regular school programs;
- A design for service delivery that accommodates the participants' work schedule and other responsibilities, including the provision of support services, when such services are unavailable from other sources, necessary for participation in project activities, such as—

—Scheduling and locating of services to allow joint participation by parents and children;

—Child care for the period that parents are involved in the project activities; and

—Transportation for the purpose of enabling parents and their children to participate in project activities.

• Special training of staff, including child care staff, to develop the skills necessary to work with parents and young children in the full range of instructional services offered by the project;

• Provision of integrated instructional services, and monitoring of these services, to participating parents and children through home-based activities;

• Operation on a year-round basis, including the provision of some program services, instructional or enrichment, during the summer months;

Note: Given the mobility of the migrant population to be served by the MEES program, the Secretary interprets this requirement to operate on a year-round basis to mean that activities must be conducted throughout the period in which participating migrant families reside in the project area. Applicants are free to interpret the requirement in other ways that are consistent with section 1205(7) of the ESEA.

• Appropriate coordination with other programs funded under the Elementary and Secondary Education Act (ESEA), any relevant programs under the Adult Education Act, the Individuals with Disabilities Education Act, the Job Training Partnership Act, the Head Start program, volunteer literacy programs, and other relevant programs; and

• An independent evaluation.

In addition, to promote the kind of strong community collaboration needed for effective Even Start Projects, sections 1202(e) and 1207(a) of the ESEA require applicants for grants under the basic Even Start program administered by SEAs to be "eligible entities", i.e., partnerships composed of (1) a local educational agency (LEA); and (2) a non-profit community-based organization, a public agency other than an LEA, an institution of higher education, or a public or private nonprofit organization of demonstrated quality other than an LEA. While those operating a MEES project do not need to be eligible entities, the Secretary strongly encourages those who would operate MEES projects to enhance the effectiveness of those projects through formation of strong, on-going collaborative relationships among these kinds of local entities.

(c) *Federal and local funding.* A MEES project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local share). However, the Federal share of the program may not exceed—

• Ninety percent of the total cost of the program in the first year;

• Eighty percent in the second year;

• Seventy percent in the third year;

• Sixty percent in the fourth year; and

• Fifty percent in any subsequent year.

The Federal share for any MEES grantee receiving a grant for a second cycle shall not exceed 50 percent. A grantee may receive funds under the MEES program for a period not to exceed eight years. The local share of the MEES project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded under the ESEA. Federal funds may not be used for indirect costs of a MEES project.

Invitational Priorities

The Secretary is especially interested in funding applications that include a plan demonstrating that grant activities will focus on one or more of the following priorities. An application that meets one of more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

The invitation to coordinate services is meant to strengthen the delivery of family literacy services to migrant agricultural families. Coordination across State education agencies is at the heart of migrant education's purpose: to mitigate disruptions in the education of qualifying migrant students. Short-term Migrant Education Even Start seasonal projects can provide intensity of services to migratory families, but those projects may not provide sufficient duration to demonstrate long-term gains for students and may be another disruption in completing their educational goals. To promote opportunities for continuous learning for migrant families, the Secretary is particularly interested in funding applications that address the following invitational priorities:

• Coordinate continuing family literacy services across State and local school district boundaries to meet the needs of highly mobile migrant agricultural families; or

• Coordinate their activities with State and local endeavors under the *America Reads Challenge* initiative, including Federal Work-Study tutoring programs and America Reads/Read*Write*Now pilot sites (information about the America Reads Challenge is available by telephone at 1–800-USA-LEARN, or TDD 1–800–437–0833; and through the Department's Web site at www.ed.gov/inits/americareads); or

• Build networks with agricultural employers and communities to coordinate and integrate resources that support English literacy for migrant agricultural families with limited English proficiency needs.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(1) The maximum score for all of these criteria is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute* (10 points) The Secretary reviews each application to determine how well the project will—

(i) Improve the educational opportunities of migrant families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program;

(ii) Be implemented through cooperative projects that build on existing community resources to create a new range of services to migrant families;

(iii) Promote achievement of the National Education Goals, especially the goals that address school readiness, student achievement, and parent involvement and participation; and

(iv) Assist children and adults from migrant families to achieve the challenging State content standards and challenging State student performance standards.

(b) *Need for project.* (20 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals (i.e., eligible migrant agricultural families).

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Note: Applicants may address (b)(iii) in any way that is reasonable. Given the purpose of the MEES program, the Secretary believes that applicants would want

particularly to focus on the following key areas:

(A) The area or areas to be served have high percentages or large numbers of migratory children and their parents, guardians, or primary caretakers in need of Migrant Education Even Start (MEES).

(B) The lack of availability of comprehensive family literacy services for the migrant population.

(C) How community resources will be used to benefit project participants.

Note to (C): An applicant could address (C) in any way that is reasonable. An applicant might, for example, provide a brief description of each of the resources the project intends to include, or a list of these resources.

(D) How the project will integrate child development, adult literacy, and parenting activities.

(E) How the project will assist migrant children and adults to achieve the State content standards and student performance standards.

(c) *Quality of the project design.* (20 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(ii) The extent to which the project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

Note: An applicant may address criterion (c) in any way that is reasonable. However, concerning design of the project, the Secretary believes that an effective application would incorporate, at a minimum, the various program elements required under section 1205 of the ESEA and listed in the *Required Program Elements* section of this notice.

(d) *Quality of project services.* (20 points) The Secretary considers the quality of the services to be provided by the proposed project.

(i) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(ii) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(e) *Adequacy of resources.* (15 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the project evaluation.* (15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers of the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: This plan must permit the preparation of an evaluation that meets the requirements of 34 CFR 75.590 as well as an annual performance report that evaluates whether project objectives are being met and, if not, includes the changes in program activities that will be adopted (see 34 CFR 75.118 and 75.253). (Instructions for the annual performance report are included in the APPENDIX to this document.) See also the discussion under National Evaluation.

National Evaluation

The Department is conducting a national evaluation of Even Start Family Literacy projects. Grantees must cooperate with the Department's efforts by adopting an evaluation plan that is consistent with the national evaluation (as well as with the grantee's responsibilities under 34 CFR 75.118, 75.253, and 75.590). It is not expected that the application will include a complete evaluation plan because grantees will be asked to cooperate with the national evaluation of the Even Start Family Literacy Program to be conducted by an independent contractor. Grantees may be required to amend their plans, however, to conform with the national evaluation.

The Secretary suggests that each applicant budget for evaluation activities as follows: a project with an estimated cost of up to $120,000 should designate $10,000 for this purpose. These funds will be used for expenditures related to the collection and aggregation of data required for the Department's national evaluation. The Secretary also recommends that applicants budget for the cost of travel to Washington, DC and two nights' lodging for the project director and project evaluator, for their participation in annual evaluation meetings.

Information by project and budget periods. Under 34 CFR 75.112 and 75.117, an eligible applicant must propose a project period, and provide budgetary information for each budget period of that proposed project period. The Secretary requests that the budgetary information include an amount for all key project components with an accompanying breakdown of any subcomponents, along with a written justification for all requested amounts. (A form for reporting this information is contained in the appendix of this notice.)

34 CFR 75.112(b) also requires that an applicant describe how and when, in each budget period of the project, it plans to meet each objective of the project. (NOTE: The Department will use this information, in conjunction with the grantee's annual performance report required under 34 CFR 75.118(a), to determine whether a continuation award for the subsequent budget year should be made. Under 34 CFR 75.253 a grantee can receive a continuation award only if it demonstrates that it either has made substantial progress toward meeting the objectives of the approved project, or has received the Assistant Secretary's approval of changes in the project to enable it to meet the objectives in the succeeding budget periods.)

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local

processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. The addresses of individual State Single Point of Contact are in the appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.214A, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS. INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(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 #84.214A), Washington, D.C. 20202–4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.214A), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(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) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(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 suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, and required documentation.

Instructions for the Application Narrative.

Estimated Public Reporting Burden Statement.

Notice to All Applicants.

Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

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 FURTHER INFORMATION CONTACT: DonnaMarie Marlow, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 600 Independence Avenue, S.W., Room 4100, Portals Building, Washington, D.C. 20202–6135. Telephone Number: (202) 260–1164. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or 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 previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or toll free, 1–800–222–4922. The documents are located under Option G-Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the Federal Register.

Program Authority: 20 U.S.C. 6362(a)(1)(A)

Dated: April 13, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

Instructions for the Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package. (NOTE: While applicants can address the criteria in any way that is reasonable, given the required emphasis of any MEES project on early childhood education, adult literacy or adult basic education, and parenting education, the Secretary believes that a reasonable plan of operation would address these three objectives. Moreover, consistent with 34 CFR 75.112(b), which requires that the application describe how and when, in each budget period, the applicant plans to meet each project objective, the Secretary believes that applicants would want particularly to describe each goal in terms of measurable objectives, specific activities that are proposed to meet each objective, time lines associated with these activities, the resources believed to be needed to achieve each objective, and how each objective will be evaluated.)

3. Provide the following information in response to the attached "NOTICE TO ALL APPLICANTS"; (1) a reference to the portion of the application in which the applicant has described the steps that the applicant proposes to take to remove barriers to equitable access to, and equitable participation in, project activities; or (2) a separate statement that includes this information.

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Application Narrative must be double-spaced, typed on one side only, and must not exceed 50 numbered pages—appendices excepted.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, 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 1810–0541. (Expiration date: March 31, 1999). The time required to complete this information collection is estimated to average 60 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. *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.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, DC 20202–6135.

Notice to All Applicants

Thank you for your interest in this program. 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 discretionary 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.*

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 section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description 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

According to the Paperwork Reduction Act of 1995, 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 1801–0004 (Exp. 8/31/98).

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.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 1 4A

TITLE: Migrant Education Even Start Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

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, 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 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, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 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.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

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 costs) 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 nineteen 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 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.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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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 andto 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. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

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

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 and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. 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 and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each effected 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)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

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 Entity 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. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~☐ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. 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

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, 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. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. 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 follow up 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; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include 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 entity 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. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 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

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State Single Points of Contact (as of April 13, 1997)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SPOCs). Because participation is voluntary, some States and territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1600 Ninth Street, room 250, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018; Block Grants only that pertain to Mental Health Substance Abuse; PATH

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management & Development, 717 14th Street, NW., suite 400, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, GA 30334, Telephone: (404) 656–3855, FAX: (404) 656–3828

Illinois

Ms. Virginia Bova, Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, IL 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street, room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive, suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39302–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Mike Blake, Intergovernmental Review Process, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

South Carolina

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1880

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street, 6th floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909,

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone:

011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444; (809) 723–6190, FAX: (809) 724–3270; (809) 724–3103

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802; Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069

Note: This list is based on the most current information provided by the States.

Information on any changes or apparent errors should be provided to Donna Rivelli (Telephone: (202) 395–5858) at the Office of Management and Budget and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalogue of Federal Domestic Assistance. The last changes made were Kentucky (12–2–97) and California telephone and FAX numbers (1–29–98).

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federal register

Thursday
April 16, 1998

Part IV

Department of Agriculture

7 CFR Part 25

Department of Housing and Urban Development

24 CFR Part 598

Designation of Rural and Urban Empowerment Zones and Enterprise Communities; Interim Rules; Notices

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

RIN 0503–AA18

Designation of Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth the policy and procedures by which the Secretary of the U.S. Department of Agriculture (USDA) will designate not more than five rural Empowerment Zones (Round II) as authorized by the Taxpayer Relief Act of 1997 (Pub. L. 105–34). This interim rule also amends regulations pertaining to the existing three (3) rural Empowerment Zones and thirty (30) rural Enterprise Communities which were designated pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) (Round I). Published elsewhere in this **Federal Register** is a Notice Inviting Applications for Designation of rural Empowerment Zones for Round II pursuant to this implementing regulation.

DATES: Effective May 18, 1998. Written comments must be received on or before June 15, 1998.

ADDRESSES: Submit written comments in duplicate on the interim rule to the Chief, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0743, 1400 Independence Ave., SW, Washington, DC 20250–0743. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain "Empowerment" in the subject. All written comments will be available for public inspection during regular work hours at the above address. (In addition, see the Paperwork Reduction Act heading under the Supplementary Information section of this preamble regarding submission of comments on the information collection burden.)

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3203, telephone 1–800–851–3403, or by sending an Internet e-mail message to "round2.rural@www.ezec.gov". For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under E.O. 12866 and has been determined to be a significant regulatory action, as that term is defined in Executive Order 12866, and has been reviewed by OMB.

Justification for Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, exemptions are permitted where an agency finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to the public interest.

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. USDA believes it would be contrary to the public interest to delay the effectiveness of the rule, since it will prescribe the criteria for designating new empowerment zones. The governmental entities and other entities that may work with them in partnership to develop an application for designation need to know the requirements of the program in time to develop their strategic plans and apply for designation, which designations are subject to a statutory deadline of January 1, 1999.

The Department has already published a rule for notice to comment on the subject of designation of Empowerment Zones, which was codified at 7 CFR part 25. This new rule to implement a second round of designation of Empowerment Zones is patterned on the prior rule. The major differences between this rule and the earlier rule are based on statutory changes, which leave virtually no room for exercise of discretion. Other additions to the rule reflect USDA's experience with the first round, clarifying the expectations of the parties to reflect actual experience. These changes are not controversial and, therefore, do not signal a necessity for advance public comment.

USDA's finding that it would be contrary to the public interest to delay the effectiveness of the rule is based on the practical necessity of preparing an application for designation as an empowerment zone within the timeframe set by the authorizing statute. The designations are required by the statute (section 1391(g)(2)) to be made before January 1, 1999. The governmental entities and other entities that may work with them in partnership to develop an application for designation need to know the requirements of the program in time to develop their strategic plans and apply for designation. Delay in prescribing the criteria for designating new empowerment zones would delay the development of these cooperative efforts and make it extremely difficult for applicants to develop their strategic plans in a timely fashion.

For these reasons, USDA believes that an interim rulemaking is justified. USDA is soliciting public comments on this rule and will consider these comments in the development of a final rule.

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is 10.772.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

Paperwork Reduction Act

The information collection requirements contained in this rule, as described in §§ 25.200(b), 25.201, 25.202, 25.203 together with the implementing application form (Application burden), §§ 25.400, 25.403, 25.405(b) and 25.405(b)(1) (Reporting burden), have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 0570–0026 (Application burden) and 0570–0027 (Reporting burden). This approval has been granted on an emergency basis through August 31, 1998. In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

In addition, USDA will seek an extension of this approval for these information collections. Therefore, USDA asks for comments regarding the information collections contained in the sections of this rule stated above. At the end of the comment period, USDA will submit the proposed information collections to OMB for approval.

Comments regarding the information collections contained in the rule, must be submitted by June 15, 1998. Comments on these information

collections should refer to the proposal by name and/or OMB control number and must be sent to: Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Housing Service, STOP 0743, 1400 Independence Ave., SW, Washington, DC 20250–0743.

Specifically, comments are solicited from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The following table identifies the components of the information collection:

Type of collection	Section of 7 CFR part 25 affected	Number of respondents	Frequency of response	Est. avg. response time (hours)	Annual burden (hours)
Application	25.200(b) 25.201 25.202 25.203	75	1	50	3,750
Periodic Reporting (all rural EZ/ECs)	25.400 25.403	38	2	10	760
Response to Warning Letter	25.405(b) 25.405(b)(1)	1	1	1	1

Total Burden in the Round II Application Year: 4,511 hours

Total Burden in each Reporting Year, Years 2 through 10: 761 hours

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940 subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

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

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 12611, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. The purpose of this rule is to provide a cooperative atmosphere between the Federal Government and the states and local governments, and to reduce any regulatory burden imposed by the Federal Government that impedes the ability of state and local governments to solve pressing economic, social, and physical problems in their communities.

I. Background

The Empowerment Zones program confers upon rural distressed American communities the opportunity to design and implement programs to create jobs, support their residents in becoming skilled and able to earn a livable income and establish other strategies for creating opportunity and building a brighter future. The program combines tax benefits with investment of Federal resources and enhanced coordination among Federal agencies.

The nomination process requires applicant communities to take stock of their assets and problems, create a vision for the future, and structure a strategic plan for achieving their vision. Local partnerships among community residents, businesses, financial institutions, service providers, transportation agencies, local court systems, neighborhood associations, tribal governments and state and local

governments are formed or strengthened by going through the application process. Businesses will be encouraged to invest and create jobs in distressed areas. Communities are afforded an opportunity to work with these partners in the creation and implementation of a community-based strategic plan. Local strategic plans are intended to produce more complete coordination between community members working in the areas of job creation, skills training, social services, education, criminal justice, infrastructure improvements and other areas critical to community development.

A. Champion Communities

Applicants which are not designated as either an Empowerment Zone or Enterprise Community, but which have evidenced quality preparation and strong support for implementing their strategic plans, are eligible for designation by the Secretary as "Champion communities." Champion communities are eligible for targeted technical assistance, information and outreach programs instituted by USDA. They receive priority preference points, where such discretionary points may be granted by agency administrators and state directors in administering USDA programs. They receive priority consideration under such other federal programs as may be identified and such other benefits as may be conferred by statute. State directors are strongly encouraged to use discretionary points on behalf of Champion communities where possible.

B. Community Development Corporations

Under a separate program directed by the Department of Housing and Urban Development (HUD), Community Development Corporations (CDCs) nominated by the locality, or the Round I applicants for the empowerment zone or enterprise community designation, are considered eligible for designation to receive tax preferred contributions from donors. HUD has designated eight rural CDCs for this program.

C. Round I Enterprise Communities

Communities designated as Enterprise Communities in Round I receive a number of benefits. Enterprise Communities are eligible for tax-exempt facilities bonds for certain private business activities. States with designated Round I Enterprise Communities received Empowerment Zone/Enterprise Community Social Service Block Grants (EZ/EC SSBGs) in the amount of approximately $3 million for each rural Enterprise Community for activities identified in their strategic plans which are consistent with the statutory requirements for the use of those funds. Enterprise Communities received special consideration in competition for funding under numerous Federal programs. The Taxpayer Relief Act of 1997 provided for a new qualified academy zone bond program to contribute toward educational needs. Also new under this recent legislation is a provision allowing certain environmental cleanup costs to be deducted from income for tax purposes in the year incurred, which costs would otherwise be capitalized into the cost of the land. Eligible cleanup costs include costs for cleaning up sites in targeted areas, which areas include Enterprise Communities.

D. Round I Empowerment Zones

Communities designated as Round I Empowerment Zones receive all of the benefits provided to Enterprise Communities, in addition to other benefits. States with rural Empowerment Zones designated in Round I received EZ/EC SSBGs in the amount of $40 million for each rural Empowerment Zone, or their proportional share of $40 million in a multi-state Empowerment Zone, equal to the proportion of that Empowerment Zone's residents living in the state. Employer Wage Credits for Round I Empowerment Zone residents are provided to qualified employers engaged in trade, business, health care, or human service delivery in designated Round I Empowerment Zones.

E. Round II Empowerment Zones

Communities designated as Round II Empowerment Zones will receive virtually all of the benefits provided to Round I Empowerment Zones. To the extent direct federal funding for Round II rural Empowerment Zones is not authorized as of the publication date of this rule, future authorization of direct funding is possible. A major benefit for Round II Empowerment Zones which is not available to Round I Empowerment Zones or Enterprise Communities is the $60,000,000 authorization per zone for issuing tax exempt facilities bonds, which issuance authority is not subject to the overall cap on state issuances of federally tax-exempt private activity bonds. A comparison of the benefits (as of this publication date) afforded the additional five Round II rural empowerment zones to those available to Round I Empowerment Zones follows:

RURAL EMPOWERMENT ZONES BENEFIT COMPARISON TABLE

	Round I	Round II
Period	From December 21, 1994 (Designation Date) to December 31, 2004.	In most cases, ten full calendar years following the Designation Date
Title XX of the Social Security Act Appropriations.	2 grants aggregating $40,000,000 per rural zone	To be determined.
Tax Exempt Bonds	A new category of tax-exempt private activity bonds was authorized for certain zone facilities. Issues are subject to state private activity bond cap levels on total issuances, and special limits on issue size. Also available to Round I ECs.	Round II rural zones can each issue up to $60,000,000 in "new bonds" to finance zone facilities in addition to Round I type tax exempt bonds Round II "new bonds" are not subject to private activity bond volume caps or the special limits on issue size applicable to Round I type issues.
Wage Credit Provision: (exclusive to Round I EZs).	20% wage credit for the first $15,000 of qualified wages paid to a zone resident who works in the zone, with a phaseout beginning in 2002. "Qualified zone wages" may not include wages for which a work opportunity tax credit is claimed (see next).	None.

RURAL EMPOWERMENT ZONES BENEFIT COMPARISON TABLE—Continued

	Round I	Round II
Work Opportunity Tax Credit (not exclusive to EZs; expires 6/30/98).	Available to Round I EZs ..... Also available to Round I ECs.	40% of qualified first-year wages paid to a member of a targeted group, where first-year wages taken into account may not exceed $6,000. Targeted employees include high risk youth residents of EZs and ECs, food stamp and SSI recipients, vocational rehabilitation referrals and others.
Internal Revenue Code 26 U.S.C. § 179 Expensing:.	Capital costs of some kinds of business property which must otherwise be capitalized and depreciated over time may be deducted in the year incurred under section 179. For a zone business, the annual expensing allowance for section 179 property is increased by the lesser of (1) $20,000 or (2) actual cost of property placed in service during the year. Eligible types of property do not include buildings. The phaseout provision of section 179 that would otherwise apply to eligible 179 property is reduced for zone property.	As with Round I EZs, up to $20,000 of additional section 179 expensing, however, the property in question must be on the parcels qualified under the poverty rate criteria. Property on parcels included under the "developable site" per that eligibility provision is not eligible property (see Eligibility Criteria Table, below).
Brownfields Deductible Expense (not exclusive to EZs and ECs).	Certain environmental remediation expenditures that would otherwise be capitalized into the cost of the land may be deducted if the costs are paid or incurred prior to January 1, 2001. Also available to Round I ECs.	Also available to Round II EZs.
Qualified Zone Academy Bonds: (A national limitation across all empowerment zones and enterprise communities of up to $400 million each year for years 1998 and 1999).	Tax credit bonds whereby certain financial institutions (i.e., banks, insurance companies, and corporations actively engaged in the business of lending money) that hold "qualified zone academy bonds" are entitled to a nonrefundable tax credit in an amount equal to a credit rate (set by the Treasury Department) multiplied by the face amount of the bond. They may or may not be interest bearing; if so, the interest is taxable. The credit is effective for obligations issued after December 31, 1997. Also available to Round I ECs.	Also available to Round II EZs. The statute does not expressly provide for an allocation to rural empowerment zones or enterprise communities.

The rural part of the program will be administered by USDA as a Federal-state-local-private partnership, with a minimum of red tape associated with the application process. Applicants must demonstrate the ability to design and implement an effective strategic plan for real opportunities for growth and revitalization and must demonstrate the capacity or the commitment to carry out these plans. Effective plan development must involve the participation of the affected community, and of the private sector, acting in concert with the state, tribal and local governments. The plan should be developed in accordance with four key principles, which will also serve as the basis for the selection criteria that will be used to evaluate the plan. Poverty, unemployment, and other need factors are critical in determining eligibility for Empowerment Zone status, but play a less significant role in the selection process.

State and local governments, tribal governments and economic development corporations that are state chartered may nominate distressed rural areas for designation as Empowerment Zones. A Round I Enterprise Community may apply for Round II Empowerment Zone status.

II. Program Description

General

Pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993, the Secretary of Agriculture designated three rural Empowerment Zones and thirty rural Enterprise Communities on December 21, 1994. The Secretary is proposing to designate five more rural empowerment zones pursuant to the authorization in title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, approved August 5, 1997).

Eligibility

To be eligible for designation as a Round II rural Empowerment Zone an area must:

1. Have a maximum population of 30,000;

2. Be one of pervasive poverty, unemployment, and general distress;

3. Not exceed one thousand square miles in total land area;

4. Demonstrate a poverty rate that is not less than:

a. 20 percent in each census tract or census block numbering area (BNA); and

b. 25 percent in 90 percent of the census tracts and BNAs within the nominated area;

5. Be located entirely within no more than three contiguous states; if it is located in more than one state, the area must have one continuous boundary; if located in only one state, the area may consist of no more than three noncontiguous parcels;

6. Show that each nominated parcel independently meets the two poverty rate requirements;

7. Be located entirely within the jurisdiction of the unit or units of general local government making the nomination; and

8. Not include any portion of a central business district as defined in the Census of Retail Trade unless the poverty rate for each Census tract is at least 35 percent.

A table summarizing the Eligibility Criteria applicable to Round II Rural Empowerment Zone designations follows:

RURAL EMPOWERMENT ZONES ELIGIBILITY CRITERIA TABLE

Criteria	Round II
Population	The population of the nominated area may not exceed 30,000.
Distress	The nominated area is one of pervasive poverty, unemployment, and general distress.
Area	Not more than 1,000 square miles. Does not include any portion of a central business district (as defined in the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is 35 percent or higher. Where a tract exceeds 1,000 square miles, the excess land may be excluded. Where a tract includes substantial governmentally owned land, the governmentally owned land may be excluded. Developable sites are not taken into account in determining whether the 1,000 square mile limitation is met.
Boundary (sub category within Area).	May be continuous or consist of not more than 3 noncontiguous parcels. Where a rural area straddles more than one state (it may not, in any event, straddle more than 3 states), the boundary must be continuous. Subject to: Where a tract exceeds 1,000 square miles or a nominated area includes substantial governmentally owned land, exclusion of the excess or government-owned land will not be treated as violating the continuous boundary requirement. Developable sites are not taken into account in determining whether the continuous boundary requirement is met.
Poverty Rate	(1) Not less than a 20% poverty rate in each census tract; and (2) At least 90% of the total census tracts each have a poverty rate of not less than 25%; Subject to: Up to an aggregate of 2,000 acres in not more than 3 noncontiguous parcels may be excluded from the nominated area for purposes of determining whether the 20% and 25% tests are met, where those acres may be developed for commercial or industrial purposes. Tracts with zero population are treated the same as tracts with population under 2,000 for purposes of applying the poverty rate criteria. Tracts with population under 2,000 are presumed to have a poverty rate of not less than 25% if: (1) more than 75% of the tract is zoned for commercial or industrial use; and (2) such tract is contiguous to 1 or more other tracts which have a poverty rate of not less than 25%, where that determination for the contiguous tracts is made using the actual poverty rate, not by applying this provision. Noncontiguous parcels must separately meet the 20% and 25% tests above. In the case of an area not tracted for population census purposes, the equivalent county divisions, defined by the Bureau of the Census for defining poverty areas, shall be used for determining poverty rates. The Secretary of Agriculture may disregard the poverty rate test for not more than one Round II Rural Empowerment Zone and apply in lieu thereof an emigration test as contained in the applicable regulations.
Additional Factors	(1) Effectiveness of the strategic plan; and (2) Assurances made by state and local governments that the strategic plan will be implemented. (3) Other criteria as the Secretary may impose. A Round I Enterprise Community (EC) may be designated a Round II Empowerment Zone, however, the enterprise community must apply for zone designation in its entirety, or in its entirety together with an additional area. A sub area of an Enterprise Community may not apply. With the exception of a Round I EC applying for a Round II Empowerment Zone designation, no portion of the area nominated may already be included in a Round I Empowerment Zone or Enterprise Community. A Round II Empowerment Zone may include an area on an Indian reservation. A nominated area in Alaska or Hawaii is deemed to meet the Distress, Area and Poverty Rate Criteria above, if for each census tract or block group at least 20% of the families within have an income which is 50% or less than the statewide median family income. [Note: the Population and other requirements still apply.]

Application of Poverty Rate Test

A rounding methodology will be applied to the 90 percent calculation in determining the number of tracts which must evidence a poverty rate of not less than 25 percent. Where the nominated area consists of fewer than ten tracts, the following table reflects application of this methodology:

Total Number of Census Tracts in the Nominated Area	Number of tracts which must demonstrate a poverty rate of not less than 25%	Number of tracts which must demonstrate a poverty rate of not less than 20%
9 [.90 x 9 = 8.1; rounded to 8]	8	1
8	7	1
7	6	1
6	5	1
5 [.90 x 5 = 4.5; rounded to 5]	5	.....
4	4	.....
3	3	.....
2	2	.....
1	1	.....

Nomination Process

The law requires that areas be nominated by one or more local governments and the states, or tribal government, where the nominated rural area is located. Nominations can be considered for designation only if:

1. The rural area meets the applicable requirements for eligibility;

2. The Secretary determines such governments have the authority to nominate the area for designation and to provide the required assurances; and

3. The Secretary determines all information furnished by the nominating state and local governments is reasonably accurate.

The state and local governments nominating an area for designation must certify:

1. Each nominating governmental entity has the authority to nominate the rural area for designation as an Empowerment Zone or Enterprise Community and make the assurances required under this part;

2. Each nominating governmental entity has the authority to make the state and local commitments contained in the strategic plan and as required by this part;

3. Each nominating governmental entity has the authority to provide written assurances satisfactory to the Secretary that these commitments will be met;

4. The nominated area satisfies the eligibility criteria, inclusive of the requirement that either

a. No portion of the area nominated is already included in a designated Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section; or

b. Where an existing Round I Enterprise Community is seeking to be designated as a Round II Empowerment Zone, that the nominated area includes the entirety of the applicable Round I Enterprise Community and any other areas as may be included in the application do not comprise any portion of a designated Empowerment Zone or Enterprise Community or part of an area otherwise nominated to be designated under this section.

The state and local governments nominating an area for designation must provide the following written assurances:

1. The strategic plan will be implemented;

2. The nominating governments will make available all information requested by USDA to aid in the evaluation of progress in implementing the strategic plan; and

3. EZ/EC SSBG funds, as applicable, will be used to supplement, not supplant, other Federal or non-Federal funds available for financing services or activities which can be used to achieve or maintain the objectives consistent with EZ/EC SSBG purposes.

Strategic Plan

The application for designation must include a strategic plan. The strategic plan must be developed in accordance with the following four key principles:

1. Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

2. Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens;

3. Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important services such as affordable childcare and transportation services that may enable residents to be employed in jobs that offer upward mobility;

4. Sustainable community development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development. These approaches should preserve the environment and historic landmarks—they may include "brownfields" clean-up and redevelopment, and promote transportation, education, and public safety.

The strategic plan must:

1. Describe the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area;

2. Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process;

3. Identify the amount of state, local, and private resources that will be available in the nominated area and the private and public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities;

4. Identify the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities;

5. Identify the baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient;

6. Must not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation; and

7. Include such other information as required by USDA in a Notice Inviting Applications.

III. Differences Between the Round II Interim Rule and the Round I Final Rule

This interim rule amends the February 6, 1995 final rule promulgated with respect to Round I Empowerment Zones and Enterprise Communities. In addition to incorporating revised eligibility criteria for Round II Empowerment Zones, changes have been made to streamline the application process and provide guidance for the format of required strategic plans. Changes have been made to the post designation monitoring activities for all Empowerment Zones and Enterprise Communities as well.

The broad categories for eligibility continue to be population, distress, area size and boundary configuration, and poverty rate. Within those categories, population limit and the requirement that the nominated area evidence pervasive poverty and general distress remain unchanged. The area size and boundary determinations were modified

for Round II and the specific poverty rate thresholds were relaxed somewhat. The former requirement that at least half of the nominated area consist of Census tracts with poverty rates of 35 percent or more does not apply to Round II designees. Round II applicants must demonstrate a poverty rate of not less than 25 percent for 90 percent of the census tracts and a poverty rate of not less than 20 percent for all Census tracts. The rule for Census tracts with populations under 2,000 was changed. The low population tract may qualify under its actual poverty rate or by application of a special rule. If (i) the low population tract is contiguous to a census tract which has an actual poverty rate of not less than 25 percent, and (ii) more than 75 percent of the area in the low population tract area is zoned commercial or industrial, then the low population tract will be treated as having a poverty rate of not less than 25 percent under the applicable statutory provision.

The requirement that nominated areas conform to census tract boundaries remains unchanged in most instances from Round I.

The 1,000 square mile limitation continues to apply to rural areas; however, for purposes of determining whether a nominated area meets this test, a special rule for rural areas allows the exclusion in a single census tract of square mileage in excess of 1,000 square miles as well as land owned by the Federal, state or local governmental entities. The exclusion of such excess area or governmentally owned land will not be treated as violating the boundary requirements.

The requirement that the nominated rural area not exceed 3 noncontiguous parcels if it is wholly within one state, but observe a continuous boundary requirement if it crosses state lines, remains unchanged from Round I. It may not involve more than three contiguous states.

Round II nominated areas may include developable sites for which the poverty rate criteria do not apply. The poverty rate criteria shall not apply to up to three noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of such parcels may not exceed 2,000 acres. This provision is subject to, and does not modify, the overall limit of three noncontiguous parcels for the entire nominated area. Developable sites are not taken into account in determining whether the 1,000 square mile and boundary limitations are met.

Round II provides that an area in an Indian reservation may be nominated for designation as a rural Empowerment Zone. Where two [or more] governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination. Nominated areas wholly within an Indian reservation are not required to adhere to census tract boundaries if sufficient credible data are available to show compliance with other requirements of the rule.

The Interim rule does not include information concerning EZ/EC SSBG funds that may become available from the U.S. Department of Health and Human Services (HHS). Information about allowed uses of such grant funds may be found in an appendix to the USDA Notice Inviting Applications published elsewhere in this issue of the **Federal Register**.

Previously designated Round I Enterprise Communities may apply for Round II Empowerment Zone designation. The Interim rule provides that a Round I Enterprise Community must apply in its entirety, or in its entirety together with additional area. A subportion of the Round I Enterprise Community may not spin off such that the remainder of the Round I Enterprise Community is not included in the application for Round II Empowerment Zone designation.

The Interim rule provides that the format of the strategic plans conform to the requirements set forth in the Notice Inviting Applications published elsewhere in this **Federal Register**. This is to offer guidance to the applicants and facilitate greater efficiency in reviewing the applications and post designation evaluation. The Interim rule clarifies and makes applicable to all designees the USDA reporting requirements which were instituted for Round I Empowerment Zones and Enterprise Communities.

The Notice Inviting Applications published elsewhere in this **Federal Register** includes as an appendix a model Memorandum of Agreement (MOA). Round I designees were asked to sign comparable MOAs; Round II applicants will also be required to sign comparable MOAs.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is revised to read as follows:

1. Title 7 is amended by revising part 25 to read as follows:

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Subpart A—General Provisions

Sec.

Subpart B—Area Requirements

Subpart C—Nomination Procedure

Subpart D—Designation Process

Subpart E—Post-Designation Requirements

Subpart F—Special Rules

Authority: 5 U.S.C. 301, 26 U.S.C. 1391.

Subpart A—General Provisions

§ 25.1 Applicability and scope.

(a) *Applicability.* This part sets forth policies and procedures applicable to rural Empowerment Zones and Enterprise Communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I) and the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II).

(b) *Scope.* This part contains provisions relating to area requirements,

the nomination process for rural Empowerment Zones and rural Enterprise Communities, and the designation of these Zones and Communities by the Secretary of the U.S. Department of Agriculture (Secretary) (USDA). Provisions dealing with the nominations and designation of urban Empowerment Zones and Enterprise Communities are promulgated by the U.S. Department of Housing and Urban Development (HUD). This part also contains provisions relating to granting certain nominated areas status as Champion communities.

§ 25.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in rural areas in order to facilitate the empowerment of the disadvantaged and long-term unemployed such that they may become economically self-sufficient, and to promote revitalization of economically distressed areas, primarily by facilitating:

(a) Coordination of economic, human services, health, transportation, education, community, and physical development plans, and other plans and related activities at the local level;

(b) Local partnerships fully involving affected communities and local institutions and organizations in developing and implementing a comprehensive multi-sectoral strategic plan for any nominated rural Empowerment Zone or Enterprise Community;

(c) Tax incentives and credits; and

(d) Distribution of other federal resources including grants from USDA and other federal departments, including Empowerment Zone and Enterprise Community Social Services Block Grant (EZ/EC SSBG) funds as may be available from the U.S. Department of Health and Human Services (HHS).

§ 25.3 Definitions.

As used in this part—

Annual report means the report submitted to USDA by all rural Empowerment Zones and Enterprise Communities pursuant to § 25.400.

Applicant means the entity that is submitting the community's strategic plan for accomplishing comprehensive economic, human community, and physical development within the area; such an entity may include, but is not limited to, state governments, local governments, tribal governments, regional planning agencies, non-profit organizations, community-based organizations, or a partnership of community members and other entities. The applicant may be the same as or different from the lead managing entity.

Baseline condition means a measurable condition or problem at the time of designation for which benchmark goals have been established for improvement.

Benchmark activity means a program, project, task or combination thereof which is designed to achieve a benchmark goal.

Benchmark goal means a measurable goal targeted for achievement in the strategic plan.

Census tract means a population census tract, or, if census tracts are not defined for the area, a block numbering area (BNA) as established by the Bureau of the Census, U.S. Department of Commerce. BNAs are areas delineated by state officials or (lacking state participation) by the Census Bureau, following Census Bureau guidelines, for the purpose of grouping and numbering decennial census blocks in counties or statistically equivalent entities in which census tracts have not been established. A BNA is equivalent to a census tract in the Census Bureau's geographic hierarchy.

Brownfield means a "qualified contaminated site" meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

Champion Community means a rural area granted such status by the Secretary pursuant to this part from among those communities which applied for designation as either a rural Empowerment Zone or Enterprise Community and which were not so designated.

Designation means the process by which the Secretary designates rural areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*), and for certain consideration by Federal programs such as the EZ/EC SSBG program established pursuant to section 2007 of title XX of the Social Security Act (42 U.S.C. 1397f).

Designation date means December 21, 1994 in the case of Round I designations and, in the case of Round II designations, the date designation is made by the Secretary.

Developable site means a parcel of land in a nominated area which may be developed for commercial or industrial purposes.

Empowerment Zone means a rural area so designated by the Secretary pursuant to this part.

Enterprise Community means a rural area so designated by the Secretary pursuant to this part.

EZ/EC SSBG funds or *EZ/EC Social Services Block Grant funds* means any funds that may be provided to states or tribal governments by HHS in accordance with section 2007(a) of the Social Security Act (42 U.S.C. 1397f), for use by designated Empowerment Zones or Enterprise Communities.

HHS means the U.S. Department of Health and Human Services.

HUD means the U.S. Department of Housing and Urban Development.

Indian reservation means a reservation as defined in section 168(j)(6) of the Internal Revenue Code, 26 U.S.C. 168(j)(6).

Lead managing entity means the entity that will administer and be responsible for the implementation of the strategic plan.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a state, and any combination of these political subdivisions that is recognized by the Secretary.

Nominated area means an area which is nominated by one or more local governments and the state or states in which it is located for designation in accordance with this part.

Outmigration means the negative percentage change reported by the Bureau of the Census, U.S. Department of Commerce, for the sum of:

(1) Net Domestic Migration;

(2) Net Federal Movement; and

(3) Net International Migration, as such terms are defined for purposes of the 1990 Census.

Poverty rate means, for a given Census tract, the poverty rate reported in Table 19 of the Bureau of the Census CPH–3 series of publications from the 1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas.

Revocation of designation means the process by which the Secretary may revoke the designation of an area as an Empowerment Zone or Enterprise Community pursuant to § 25.405.

Round I identifies designations of rural Empowerment Zones and Enterprise Communities pursuant to subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

Round II identifies designations of rural Empowerment Zones pursuant to subtitle F (Empowerment Zones,

Enterprise Communities, Brownfields, and Community Development Financial Institutions) of Title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

Rural area means any area defined pursuant to § 25.503.

Secretary means the Secretary of the U.S. Department of Agriculture.

State means any state in the United States.

Strategic plan means a plan for achieving benchmark goals evidencing improvement over identified baseline conditions, developed with the participation and commitment of local governments, tribal governments, state governments, private sector, community members and others, pursuant to the provisions of § 25.202.

USDA means the U.S. Department of Agriculture.

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural Empowerment Zones and Enterprise Communities as are made shall be from the applications submitted in response to the applicable Notice Inviting Applications. The Secretary may elect to designate as Champion communities, those nominated areas which are not designated as either a rural Empowerment Zone or Enterprise Community and whose applications meet the criteria contained in § 25.301.

(b) *Number of rural empowerment zones, enterprise communities and champion communities.*—(1) *Round I.* The Secretary may designate up to three rural Empowerment Zones and up to thirty rural Enterprise Communities prior to December 31, 1996.

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural Empowerment Zones in addition to those designated in Round I. The number of Champion Communities is limited to the number of applicants which are not designated.

(c) *Period of designation.* The designation of a rural area as an Empowerment Zone or Enterprise Community shall remain in effect during the period beginning on the designation date and ending on the earliest of the:

(1) End of the tenth calendar year beginning on or after the designation date;

(2) Termination date designated by the state and local governments in their application for nomination;

(3) Date the Secretary revokes the designation; or

(4) Date the Empowerment Zone or Enterprise Community modifies its boundary without first obtaining the written approval of the Secretary.

§ 25.5 Waivers.

The Secretary may waive any provision of this part in any particular case for good cause, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

§§ 25.6—25.99 [Reserved]

Subpart B—Area Requirements

§ 25.100 Eligibility requirements.

A nominated rural area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population of 30,000;

(b) Is one of pervasive poverty, unemployment, and general distress, as described in § 25.102;

(c) Meets the area size and boundary requirements of § 25.103;

(d) Is located entirely within the jurisdiction of the general local government making the nomination; and

(e) Meets the poverty rate criteria contained in § 25.104.

(f) Provision for Alaska and Hawaii. A nominated area in Alaska or Hawaii shall be presumed to meet the criteria of paragraphs (b), (c), and (e) of this section if, for each Census tract or block group in the area, at least 20 percent of the families in such tract have an income which is 50 percent or less of the statewide median family income.

§ 25.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to this part shall be based on the 1990 Census, and from information published by the Bureau of Census and the Bureau of Labor Statistics, provided, however, that for purposes of demonstrating outmigration pursuant to § 25.104(b)(2)(iii), interim data collected by the Bureau of Census for the 1990–1994 period may be used. The data shall be comparable in point or period of time and methodology employed.

(b) *Use of statistics on boundaries.* The boundary of a rural area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of Census tracts, or, where tracts are not defined, with block numbering areas, except:

(1) Nominated areas in Alaska and Hawaii shall coincide with the boundaries of census tracts or block groups as such term is used for purposes of the 1990 Census;

(2) Developable sites are not required to coincide with the boundaries of Census tracts; and

(3) Nominated areas wholly within an Indian reservation are not required to adhere to census tract boundaries if sufficient credible data are available to show compliance with other requirements of this part. The requirements of § 25.103 are otherwise applicable.

§ 25.102 Pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Conditions of poverty must be reasonably distributed throughout the entire nominated area. The degree of poverty shall be demonstrated by citing available statistics on low-income population, levels of public assistance, numbers of persons or families in poverty or similar data.

(b) *Unemployment.* The degree of unemployment shall be demonstrated by the provision of information on the number of persons unemployed, underemployed (those with only a seasonal or part-time job) or discouraged workers (those capable of working but who have dropped out of the labor market—hence are not counted as unemployed), increase in unemployment rate, job loss, plant or military base closing, or other relevant unemployment indicators having a direct effect on the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, per capita property tax base, average years of school completed; outmigration and population decline, a high or rising incidence of crime, narcotics use, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidents of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress. The data and methods used to produce such indicators that are used to describe general distress must all be stated.

§ 25.103 Area size and boundary requirements

(a) General eligibility requirements. A nominated area:

(1) May not exceed one thousand square miles in total land area;

(2) Must have one continuous boundary if located in more than one

state or may consist of not more than three noncontiguous parcels if located in only one state;

(3) If located in more than one state, must be located within no more than three contiguous states;

(4) May not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each Census tract in such district is not less than 35 percent for an Empowerment Zone (30 percent in the case of an Enterprise Community);

(5) Subject to paragraph (b)(4) of this section, may not include any portion of an area already included in an Empowerment Zone or Enterprise Community or included in an area otherwise nominated to be designated under this section;

(b) Eligibility requirements specific to different rounds.

(1) For purposes of Round I designations only, a nominated area may not include any area within an Indian reservation;

(2) For purposes of applying paragraph (a)(1) of this section to Round II designations:

(i) A Census tract larger than 1,000 square miles shall be reduced to a 1,000 square mile area with a continuous boundary, if necessary, after application of §§ 25.103(b)(2)(ii) and (iii);

(ii) Land owned by the Federal, state or local government may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of a nominated area; and

(iii) Developable sites, in the aggregate not exceeding 2,000 acres, may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of the nominated area;

(3) For purposes of applying paragraph (a)(3) of this section to Round II designations, the following shall not be treated as violating the continuous boundary requirement:

(i) Exclusion of excess area pursuant to paragraph (b)(2)(i) of this section;

(ii) Exclusion of government owned land pursuant to paragraph (b)(2)(ii) of this section; or

(iii) Exclusion of developable sites pursuant to paragraph (b)(2)(iii) of this section; and

(4) Paragraph (a)(5) of this section shall not apply where a Round I Enterprise Community is applying either in its entirety or together with an additional area for a Round II Empowerment Zone designation.

§ 25.104 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following poverty rate criteria specific to Round I and Round II nominated areas:

(1) Round I: (i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent; and

(iii) For at least 50 percent of the Census tracts within the nominated area, the poverty rate may not be less than 35 percent.

(2) Round II: (i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent;

(iii) Up to three noncontiguous developable sites, in the aggregate not exceeding 2,000 acres, may be excluded in determining whether the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section are met; and

(iv) The Secretary may designate not more than one rural Empowerment Zone without regard to paragraphs (a)(2)(i) and (a)(2)(ii) of this section if such nominated area satisfies the emigration criteria specified in paragraph (b)(2)(iii) of this section.

(b) *Special rules.* The following special rules apply to the determination of poverty rate for Round I and Round II nominated areas:

(1) *Round I*—(i) *Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate that meets the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(1)(iii) of this section;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1)(i) and (ii) of this section if more than 75 percent of the tract is zoned for commercial or industrial use;

(iii) *Adjustment of poverty rates for Round I Enterprise Communities.* For Round I Enterprise Communities only, the Secretary may, where necessary to carry out the purposes of this part, apply one of the following alternatives:

(A) Reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the Census tracts (or, if fewer, five Census tracts) in the nominated area:

(*1*) The 20 percent threshold in paragraph (a)(1)(i) of this section;

(*2*) The 25 percent threshold in paragraph (a)(1)(ii) of this section;

(*3*) The 35 percent threshold in paragraph (a)(1)(iii) of this section; or

(B) Reduce the 35 percent threshold in paragraph (a)(1)(iii) of this section by 10 percentage points for three Census tracts.

(2) *Round II*—(i) *Census tracts with no population.* Census tracts with no population shall be treated the same as those Census tracts having a population of less than 2,000;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if:

(A) More than 75 percent of such tract is zoned for commercial or industrial use; and

(B) Such tract is contiguous to 1 or more other Census tracts which have a poverty rate of 25 percent or more, where such determination is made without applying § 25.104(b)(2)(ii).

(iii) *Emigration Criteria.* For purposes of the discretion as may be exercised by the Secretary pursuant to paragraph (a)(2)(iv) of this section, a nominated area must demonstrate outmigration of not less than 15 percent over the period 1980–1994 for each census tract. The outmigration for each census tract in the nominated area shall be as reported for the county in which the census tract is located: *Provided, however,* That the nominated area may include not more than one census tract where the reported outmigration is less than 15 percent, which tract shall be contiguous to at least one other census tract in the nominated area.

(c) *General rules.* The following general rules apply to the determination of poverty rate for both Round I and Round II nominated areas.

(1) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percentage point or more up to the next highest whole percentage point figure.

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II, up to 3 noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria set forth in this section.

(3) *Areas not within census tracts.* In the case of an area which is not tracted for Census tracts, the block numbering area shall be used for purposes of determining poverty rates. Block groups may be used for Alaska and Hawaii.

§§ 25.105–25.199 [Reserved]

Subpart C—Nomination Procedure

§ 25.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the states in which an area is located must nominate such area for designation as an Empowerment Zone or Enterprise Community. Nominated areas can be considered for designation only if:

(1) The rural area meets the applicable requirements for eligibility identified in § 25.100;

(2) The Secretary determines such governments have the authority to nominate the area for designation and to provide the assurances described in paragraph (b) of this section; and

(3) The Secretary determines all information furnished by the nominating states and local governments is reasonably accurate.

(b) *Required certifications and assurances.* The state and local governments nominating an area for designation must:

(1) Submit the following certifications:

(i) Each nominating governmental entity has the authority to:

(A) Nominate the rural area for designation as an Empowerment Zone or Enterprise Community and make the assurances required under this part;

(B) Make the state and local commitments contained in the strategic plan or otherwise required under this part; and

(C) Provide written assurances satisfactory to the Secretary that these commitments will be met; and

(ii) The nominated area satisfies the eligibility criteria referenced in § 25.100, inclusive of the requirement that either;

(A) No portion of the area nominated is already included in a designated Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section; or

(B) Where an existing Round I Enterprise Community is seeking to be designated as a Round II Empowerment Zone, that the nominated area includes the entirety of the applicable Round I Enterprise Community and that any other areas as may be included in the application do not comprise any portion of a designated Empowerment Zone or Enterprise Community or part of an area otherwise nominated to be designated under this section; and

(2) Provide written assurance that:

(i) The strategic plan will be implemented;

(ii) The nominating governments will make available, or cause to be made available, all information requested by USDA to aid in the evaluation of progress in implementing the strategic plan; and

(iii) EZ/EC SSBG funds, as applicable, will be used to supplement, not supplant, other Federal or non-Federal funds available for financing services or activities which promote the purposes of section 2007 of the Social Security Act.

§ 25.201 Application.

No rural area may be considered for designation pursuant to this part unless the application:

(a) Demonstrates that the nominated rural area satisfies the eligibility criteria contained in § 25.100;

(b) Includes a strategic plan, which meets the requirements contained in § 25.202;

(c) Includes the written commitment of the applicant, as applicable, that EZ/EC SSBG funds will be used to supplement, not replace, other Federal and non-Federal funds available for financing services or activities that promote the purposes of section 2007 of the Social Security Act; and

(d) Includes such other information as may be required by USDA.

§ 25.202 Strategic plan.

(a) *Principles of strategic plan.* The strategic plan included in the application must be developed in accordance with the following four key principles:

(1) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(2) Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens.

(3) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important services such as affordable childcare and transportation services that may enable residents to be employed in jobs that offer upward mobility.

(4) Sustainable community development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community, and human development. These approaches should preserve the environment and historic landmarks—they may include "brownfields" clean-up and redevelopment, and promote transportation, education, and public safety.

(b) *Minimum requirements.* The strategic plan must:

(1) Describe the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area;

(2) Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process;

(3) Identify the amount of state, local, and private resources that will be available in the nominated area and the private and public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities;

(4) Identify the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities, including details about proposed uses of EZ/EC SSBG funds that may be available from HHS;

(5) Identify the baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient;

(6) Must not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation; and

(7) Include such other information as required by USDA in the Notice Inviting Applications.

(c) *Implementation of strategic plan.* The strategic plan may be implemented by state governments, tribal governments, local governments, regional planning agencies, non-profit organizations, community-based organizations, or other nongovernmental entities. Activities included in the strategic plan may be funded from any source, Federal, state, local, or private, which agrees to provide assistance to the nominated area.

(d) *Public access to materials and proceedings.* The applicant or the lead managing entity, as applicable, must make available to the public copies of the strategic plan and supporting documentation and must conduct its meetings in accordance with the applicable open meetings acts.

§ 25.203 Submission of applications.

General. A separate application for designation as an Empowerment Zone or Enterprise Community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the Notice Inviting Applications as published in the **Federal Register**, and must contain complete and accurate information.

§ 25.204 Evaluation of the Strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated rural areas described in subpart D of this part. On the basis of this evaluation, USDA may request additional information pertaining to the plan and the proposed area and may, as part of that request, suggest modifications to the plan, proposed area, or term that would enhance its effectiveness. The effectiveness of the strategic plan will be determined in accordance with the four key principles contained in § 25.202(a). USDA will review each plan submitted in terms of the four equally weighted principal objectives, and of such other elements of these principal objectives as are appropriate to address the opportunities and problems of each nominated area, which may include:

(a) *Strategic vision for change.*—(1) *Goals and coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets; and

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

(b) *Community-based partnerships.*—(1) *Community partners.* The extent to which residents of the community participated in developing the strategic plan and their commitment to implementing it, the extent to which community-based organizations in the nominated area have participated in the development of the nominated area, and their record of success measured by their achievements and support for undertakings within the nominated area;

(2) *Private and nonprofit organizations as partners.* The extent to which partnership arrangements include commitments from private and nonprofit organizations, including corporations, utilities, banks and other financial institutions, human services organizations, health care providers, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which states and local governments are committed to providing support to the strategic plan, including their commitment to "reinventing" their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the zone or community's designation.

(c) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship will increase within the zone or community;

(2) The extent to which residents will achieve a real economic stake in the zone or community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic, community and human development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire area and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the zone or community interrelates with the broader regional economies; and

(6) The extent to which lending and investment opportunities will increase within the zone or community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(d) *Sustainable community development.*—(1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating localities and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the zone or community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection and the vitality of life of the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner consistent that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted and the extent to which young people will be:

(i) Provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(ii) Invited to take part as resources in the rebuilding of their community; and

(iii) Provided the opportunity to develop a sense of industry and competency and a belief they might exercise some control over the course of their lives.

(7) *Education goals.* The extent to which schools, religious organizations, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse.* The extent to which the plan addresses levels of drug abuse and drug-related activity through the expansion of drug treatment services, drug law enforcement initiatives, and community-based drug abuse education programs;

(10) *Health care.* The extent to which the plan promotes a community-based system of health care that facilitates access to comprehensive, high quality care, particularly for the residents of EZ/EC neighborhoods;

(11) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated zone or community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, creed, national origin, gender, handicap or age in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or the forms of compensation, or use of facilities. Applicants must comply with the provisions of Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

§§ 25.205—25.299 [Reserved]

Subpart D—Designation Process

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of applications for designation as Empowerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the **Federal Register**.

(b) *Acceptance for processing.* USDA will accept for processing those applications as Empowerment Zones and Enterprise Communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the Notice Inviting Applications published in the **Federal Register**. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

(c) *Site visits.* In the process of reviewing each application accepted for processing, USDA may undertake site visits to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated rural areas, or period during the application review period.* Subject to the limitations imposed by § 25.100.

(1) USDA may request additional information pertaining to the strategic plan and proposed area and may, as a part of that request, suggest modifications to the strategic plan or nominated area that would enhance the effectiveness of the strategic plan;

(2) Enlargement of a nominated area will not be allowed if the inclusion of the additional area will result in an average poverty rate less than the average poverty rate at the time of initial application; and

(3) An applicant may modify the nominated area or strategic plan during the application review period with USDA approval.

(e) *Designations.* Final determination of the boundaries of areas and the term for which the designations will remain in effect will be made by the Secretary.

§ 25.301 Selection factors for designation of nominated rural areas.

In choosing among nominated rural areas eligible for designation as Empowerment Zone, Enterprise Community or Champion Community, the Secretary shall consider:

(a) The potential effectiveness of the strategic plan, in accordance with the key principles in § 25.202(a);

(b) The strength of the assurances made pursuant to § 25.200(b) that the strategic plan will be implemented;

(c) The extent to which an application proposes activities that are creative and innovative;

(d) The extent to which areas consisting of noncontiguous parcels are not so widely separated as to compromise achievement by the nominated area of a cohesive community or regional identity; and

(e) Such other factors as established by the Secretary, which include the degree of need demonstrated by the nominated area for assistance under this part and the diversity within and among the nominated areas. If other factors are established by USDA, a **Federal Register** Notice will be published identifying such factors, along with an extension of the application due date if necessary.

§§ 25.302–25.399 [Reserved]

Subpart E—Post-Designation Requirements

§ 25.400 Reporting.

(a) *Periodic reports.* Empowerment Zones, Enterprise Communities and Champion Communities shall submit to USDA periodic reports which identify the community, local government and state actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones, Enterprise Communities and Champion communities as USDA may request from time to time shall be submitted promptly. On the basis of this information and of on-site reviews, USDA will prepare and issue periodic reports on the effectiveness of the Empowerment Zones/Enterprise Communities Program.

(b) *Annual report.* All rural Empowerment Zones and Enterprise Communities shall submit an annual report to USDA for each calendar year which includes an executive summary and benchmark progress report as follows:

(1) *Executive summary.* The executive summary shall identify the progress and setbacks experienced in efforts to achieve benchmark goals. Activities other than those expressly included in the strategic plan should also be noted in order to provide an understanding of where the community stands with respect to implementation of the strategic plan. Furthermore, the executive summary should address the following:

(i) Identify the most significant accomplishments to date.

(ii) Describe the level of community participation and overall support for the EZ/EC initiative.

(iii) List and describe new partnerships or alliances formed.

(iv) Identify problems or obstacles not otherwise anticipated in the strategic plan.

(v) Describe solutions developed or efforts to address the problems and obstacles.

(vi) Identify practices or concepts which were found especially effective in implementing the strategic plan.

(2) *Benchmark progress report.* For each benchmark goal the community will provide a current measure of the baseline condition which is the subject of targeted improvement and whether the current measure represents an improvement from the baseline condition as initially stated in the strategic plan. For each benchmark activity the community will provide a status report in form and substance acceptable to USDA.

(c) *Timely state data.* Where not prevented by state law, nominating state governments must provide the timely release of data requested by USDA for the purposes of monitoring and assisting the success of Empowerment Zones and Enterprise Communities.

§ 25.401 Responsibility of lead managing entity.

(a) *Financial.* The lead managing entity will be responsible for strategic plan program activities and monitoring the fiscal management of the funds of the Empowerment Zone or Enterprise Community.

(b) *Reporting.* The lead managing entity will be responsible for developing the reports required under this subpart.

(c) *Cooperation.* All entities with significant involvement in implementing the strategic plan shall cooperate with the lead managing entity in its compliance with paragraphs (a) and (b) of this section.

§ 25.402 Periodic performance reviews.

USDA will regularly evaluate the progress in implementing the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and using other information submitted. USDA may also commission evaluations of the Empowerment Zone program as a whole by an impartial third party. Evidence of continual involvement of all segments of the community, including low income and disadvantaged residents, must be evidenced in the implementation of the strategic plan.

§ 25.403. Ongoing 2-year work plan requirement.

(a) Each Empowerment Zone and Enterprise Community shall prepare and submit annually, work plans for the subsequent 2-year interval of the designation period.

(b) The 2-year work plan shall be submitted to USDA 45 days prior to the start of the applicable 2-year period.

(c) The 2-year work plan must include the following sections and content:

(1) *Section 1—Work Plan.* Identify the benchmark goals to be achieved in the applicable 2 years of the strategic plan, together with the benchmark activities to be undertaken during the applicable 2 years of implementation. Include references to the applicable baseline conditions and performance indicators to be used in assessing performance.

(2) *Section 2—Operational Budget.* For each benchmark activity to be undertaken in the applicable 2 years of the strategic plan, set forth the following information:

(i) Expected implementation costs;

(ii) Proposed sources of funding and whether actual commitments have been obtained;

(iii) Technical assistance resources and other forms of support pledged by Federal, state and local governments, non-profit organizations, foundations, private businesses, and any other entity to assist in implementation of the community's strategic plan, and whether this support is conditional upon the designation of the community as an Empowerment Zone; and

(iv) Documentation of applications for assistance and commitments identified as proposed funding and other resources.

§ 25.404 Validation of designation.

(a) *Reevaluation of designations.* On the basis of the performance reviews described in § 25.402, and subject to the provisions relating to the revocation of designation appearing at § 25.405, USDA will make findings as to the continuing eligibility for and the validity of the designation of any Empowerment Zone, Enterprise Community, or Champion Community.

(b) *Modification of designation.* Based on a rural zone or community's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation in accordance with § 25.405 and the requirements as to the number, maximum population and other characteristics of rural Empowerment Zones referenced in § 25.100, the Secretary may modify designations by reclassifying rural Empowerment Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

§ 25.405 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of a rural area as an Empowerment Zone or Enterprise Community, or withdraw status as a Champion Community, if the Secretary determines, on the basis of the periodic monitoring and assessments described in § 25.402, that the applicant, lead managing entity, or the states or local governments in which the rural area is located have:

(1) Modified the boundaries of the area without written approval from USDA;

(2) Failed to make progress in implementing the strategic plan; or

(3) Not complied substantially with the strategic plan (which may include failing to apply funds as contained in the strategic plan without advance written approval from USDA).

(b) *Letter of Warning.* Before revoking the designation of a rural area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the applicant, the lead managing entity (if different from the applicant) and the nominating states and local governments, with a copy to all affected Federal agencies of which USDA is aware:

(1) Advising that the Secretary has determined that the applicant and/or lead managing entity and/or the nominating local governments and state:

(i) Have modified the boundaries of the area without written approval from USDA; or

(ii) Are not complying substantially with, or have failed to make satisfactory progress in implementing the strategic plan; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, the Secretary must issue a final notice of revocation of the designation of the rural area as an Empowerment Zone or Enterprise Community, after:

(1) Allowing 90 days from the date of receipt of the letter of warning for response; and

(2) Making a determination pursuant to paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* USDA will notify all affected Federal agencies of which it is aware of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to § 25.404(b).

(e) *Effective date.* The final notice of revocation of designation will be published in the **Federal Register**, and the revocation will be effective on the date of publication.

§§ 25.406–25.499 [Reserved]

Subpart F—Special Rules

§ 25.500 Indian reservations.

(a) An area in an Indian reservation shall be treated as nominated by a state and a local government if it is nominated by the reservation governing body.

(b) For purposes of paragraph (a) of this section, a reservation governing body must be the governing body of an Indian entity recognized and eligible to receive services from the United States Bureau of Indian Affairs, U.S. Department of Interior.

(c) Where two or more governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

§ 25.501 Governments.

If more than one state or local government seeks to nominate an area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 25.502 Nominations by state-chartered economic development corporations.

Any rural area nominated by an economic development corporation chartered by a state and qualified to do business in the state in which it is located shall be treated as nominated by a state and local government.

§ 25.503 Rural areas.

(a) *What constitutes "rural".* A rural area may consist of any area that lies outside the boundaries of a Metropolitan Area, as designated by the Office of Management and Budget, or, is an area that has a population density less than or equal to 1,000 persons per square mile, the land use of which is primarily agricultural.

(b) *Exceptions to the definition.* On a case by case basis, the Secretary may grant requests for waiver from the definition of "rural" stated in paragraph (a) of this section upon a showing of good cause. Applicants seeking to apply for a rural designation who do not satisfy the definition in paragraph (a) of this section must submit a request for waiver in writing to the Deputy Administrator, USDA Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3202. Requests must include:

(1) The name, address and daytime phone number of the contact person for the applicant seeking the waiver; and

(2) Sufficient information regarding the area that would support the infrequent exception from the definition.

(c) *Waiver process.* The Secretary, in consultation with the Department of Commerce, will have discretion to permit rural applications for communities that do not meet the above rural criteria.

§§ 25.504–25.999 [Reserved]

Dated: April 10, 1998.

Dan Glickman,

Secretary of Agriculture.

Regulatory Impact Analysis

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

1. *Title/Description:*

Designation of Rural Empowerment Zones and Enterprise Communities.

This rule establishes procedures for designating five new rural Empowerment Zones.

2. *Cite/Status:* 7 CFR Part 25 Interim Rule.

3. *Purpose:* This rule implements that portion of Subtitle F of Title IX of the Taxpayer Relief Act of 1997 (P. L. 105–34, approved August 5, 1997) concerning procedures for designating five rural Empowerment Zones (Round II). It also amends regulations pertaining to the three existing rural Empowerment Zones that were designated pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (P. L. 103–66, approved August 10, 1993).

4. *Degree of Discretion:* Mandated by Subtitle F, referred to above.

5. *Special Considerations:*

a. Statutory or judicial deadlines: The law requires that designations be made prior to January 1, 1999.

b. Public health and safety deadlines: None identified.

c. Others: None identified.

6. *Economic Impacts:*

A. *Costs:*

a. Nature of hindrance to economic growth:

This rule establishes procedures for designating places to receive Round II rural Empowerment Zone (EZ) status. No hindrance to economic growth is expected, rather, the program objective is to foster economic growth in the designated communities. However, various participants will contribute funding to the program, hence there are some costs involved.

b. Who is affected:

This is a highly competitive program. It is expected that more than one hundred rural communities will submit applications with strategic plans in order to qualify for one of the five new rural EZ's. In comparison, there were 227 applicants for 3 Round Empowerment Zones and 30 Round I Enterprise Communities. All communities that apply will incur some relatively minor costs in completing their plans—probably in the range of $2,000 to $20,000 per community. More significant costs may be incurred by those communities that receive designations. These costs will be borne by all entities that have promised to invest in the community, including Federal, State, and local governments, nonprofit organizations, neighborhood groups, and businesses.

c. Degree of impact on individuals and society:

It is important to distinguish between the concepts of "cost" and "investment." A cost estimate involves an attempt to summarize the amount of new or additional funds committed to implementation of community strategic plans or—in the case of the designated Empowerment Zones—the amount of revenues foregone as the result of tax benefits. Ordinarily, costs are assumed to be an involuntary burden on society, which it is necessary to minimize. Investments, on the other hand, are considered to be the application of resources in such a way as to produce desirable outcomes. Investments are considered to be both voluntary and likely to produce a rate of return that justifies their expenses. Because the expenditures of Empowerment Zones are made for the purpose of implementing the long-term strategic plans of these communities, these expenditures must be considered to be investments.

The total costs to society associated with the five new zones are difficult to predict. The Department of Treasury estimates that the cost to the Federal Treasury in terms of taxes foregone associated with the various Federal tax incentives for the five new rural zones will be $200 million over the 10-year life of the designated zones. This estimate is subject to considerable uncertainty because the zones will receive tax incentives that are relatively new and it is hard to predict how much they will be used in the five zones. Unlike the first round of rural EZ's, which received $40 million each in Title XX Social Service Block Grants (SSBG), no automatic grant funding has been supplied for the Round II zones, though the Administration has proposed to include some such grant funding. Additional uncertainty over the cost to the Federal government involves other Federal assistance that these zones are likely to request in the future in order to carry out their strategic plans. The amount of such grants is a function of what the communities envision they

need to implement their plans and the priority the Administration places on responding to their funding requests. The zone revitalization plans will also draw on the resources of State and local governments, the private sector, and on non-profit organizations. The costs incurred by these entities are difficult to predict, since they will depend on the communities' plans and on the willingness of these entities to contribute.

A rough idea of the potential magnitude of these costs may be revealed from the experience of the three Round I rural EZ's designated in December 1994. (Round I also included 30 Enterprise Communities (EC's), which receive substantially less assistance than the EZ's—because Round II does not include any EC's, we will ignore here the costs and benefits associated with EC's and focus only on the EZ's in this analysis). According to data collected by USDA covering the first three years since their designation, the three Round I rural EZ's have used the following funds (excluding the cost of tax incentives which remain unknown): $25 million from Federal SSBG funds, $35 million from other Federal funds, $24 million from State governments, $3 million from local governments, $53 million from the private sector, and $4 million from nonprofit organizations. These investments are expected to continue to accumulate over the 10-year duration of the zones.

While the magnitude of the investments by the Federal Government associated with these zones appears very small relative to the total Federal budget, their total for some of the other entities, such as the individual State and local governments contributing to these zones, may be more substantial relative to their budgets. However, these costs might be offset at least in part by development-induced increases in tax revenues resulting from the program, and by reduction in other government costs associated with higher levels of poverty and unemployment, both of which are expected to be reduced by this program. In addition, with the exception of Federal SSBG funds, all other expenditures of public and private funds represent voluntary investments from existing sources of funding that would otherwise be spent in other places, and they thus do not represent a net additional cost.

The purpose of this regulatory impact analysis is to determine the extent to which program costs (and benefits) might be affected by USDA's rules. Because this is a bottom-up program that allows localities to make their own plans, most of the costs are determined by the locality and participating funding sources. Hence the magnitude of costs is not directly determined by USDA's regulations. The rule mainly affects costs through its selection criteria, in which communities are encouraged to develop and implement comprehensive plans using whatever Federal, State, and local resources are required for a successful, sustainable revitalization. The more comprehensive these plans are, the more costly (and beneficial) their implementation is likely to be. While USDA does not require a minimum amount of spending for each of its zones, given the comprehensive nature of its guidelines, that might lead applicants to propose more ambitious (and hence more costly) strategies than they might otherwise propose. However, these other Federal costs represent a redirection of funds that would otherwise be spent in other communities and they are therefore not a net additional burden on the Treasury.

The highly competitive nature of the program's selection process is also expected to result in many communities going through the strategic planning process required as part of the application requirements. Since only five of these communities will receive designation, the remaining, undesignated communities will be left with a plan but without any automatic Federal support. USDA will designate applicant communities that complete a satisfactory planning process as Champion Communities. Following designation of the Round I zones, many of these communities have been found to follow through with some portion of their plans, seeking other types of assistance from various sources (Federal, State, local, etc.). This in turn will lead to additional costs (and benefits). However, these Federal costs represent a redirection of funds that would otherwise be spent in other communities and they are therefore not a net additional burden on the Treasury.

The rule also provides a mechanism whereby zone designation may be terminated in the event that a zone does not live up to its promised strategy. This might also be expected to add to program costs (and benefits) because it places pressure on participants (States, local governments, private and nonprofit sectors) to make a good faith effort to deliver on their promised contributions to the zone.

B. *Benefits*

a. Nature:

The Empowerment Zones program represents a radically new approach to the development of severely depressed rural communities. Unlike other Federal programs, the Empowerment Zone program is targeted heavily toward those rural communities with the highest levels of poverty or population loss. These communities are typically locked in a pattern of hopelessness from which it is very difficult to extricate themselves. Often, they have neither the will nor the organizational capacity, in addition to a lack of resources, to extricate themselves from the cycle of distress in which they are trapped. The objective of the Empowerment Zone program is not merely to expend Federal and other program dollars within the Zones. Instead, the program seeks to change the whole equation by which these communities approach their futures by helping them to develop fresh visions of what their futures can be like, build comprehensive, long-term strategic plans to achieve these visions, assemble resources and partners to assist with plan implementation, and build internal community capacity to plan and implement programs so that at the end of the ten-year designation period the communities have achieved a position in which the economic and social gains they have made will be sustainable without continued governmental assistance.

This process of building sustainability cannot occur through isolated, single-program investments, even though these may individually meet pressing needs within the community. It requires the coordinated and comprehensive development of a wide range of community assets, skills and capacities that occur in a variety of sectors. One way of thinking about this process of building toward sustainability is by using the analogy of an "empowerment staircase." The first steps on the staircase are building hope that a different future may be possible, forming a vision of what future is desired for the community, creating a realistic plan for achieving that vision, obtaining resources to implement the plan, achieving some initial positive results, revising the plan to reflect changed conditions and aspirations, building additional partnerships and leveraging additional resources, enhancing the community's organizational and skill base and its capacity to continue its development process after the Federal support runs out.

The experience with the Round I Empowerment Zones and Enterprise Communities, which are approximately three years into the implementation of their development plans, shows that most of these communities have climbed the first five steps of the empowerment staircase. The

announcement of a program specifically limited to the most distressed communities gave the 227 applicant communities hope that a different outcome might be possible for them. The competition for designation and the required strategic planning process itself led most applicant communities to establish community-determined visions of different futures and to build meaningful, comprehensive, long-term strategic plans for reaching them. Both designated communities and those deemed to be Champion Communities have also obtained resources to implement portions of their plans and have achieved promising results, some of which are discussed further below. Many are now beginning to re-examine their strategic plans and to substitute alternative, more empowering development strategies for these strategies they employed initially. For example, the Mid-Delta Empowerment Zone Alliance, in Mississippi, has already created a number of jobs to help enable unemployed workers to be gainfully employed. Now it is turning its attention to strategies that will increase the number of opportunities for local workers to become business owners and increase the rates of entrepreneurship within the community. In addition, through training offered by the USDA and other sources, as well as on-the-job experience, the staff and board members of Empowerment Zones and Enterprise Communities are learning valuable skills in community organizing, resource identification and mobilization, strategic planning, and project implementation which will help them to continue their gains through local effort once the ten-year designation ends.

The comprehensive and holistic nature of the community strategic plans is itself a significant benefit over the more typical pattern of disconnected, single-program investments that characterizes most Federally-assisted development efforts. Economic and community development relies on a number of factors to be successful, all of which must be present for significant and lasting gains to be accomplished. For example, not only must jobs be created, but workers must be trained with appropriate skills for these jobs in order for them to take these jobs and other services such as transportation and day care must be available. Not only must new small business financing be available, but entrepreneurship training and technical support must be available during the start-up phase to assure higher rates of business success. As a result of such coordinated and holistic development, the likely benefits from Federal and other investments are significantly higher than if the investments occurred singly, without linkage to other, complementary actions and investments.

The statute entitles each of the five new rural Empowerment Zones to qualify for new Empowerment Zone Facility Bonds, a new category of tax exempt private activity bond, not subject to State volume caps. Each new rural zone may issue up to $60 million in these bonds. These are in addition to the more limited zone facility bonds available to Round I Empowerment Zones. The new rural Empowerment Zones also receive additional tax incentives for expensing of private investment in equipment. These tax incentives last for ten years. The new zones will also be eligible for some short-term tax reductions, including (1) Brownfields expensing of environmental cleanup costs for certain contaminated properties (through year 2000), (2) tax exempt Qualified Zone Academy Bonds for school programs, equipment, curriculum and rehabilitation, subject to a national volume cap (through 1999), and (3) Work Opportunity Tax Credits to employers hiring targeted groups of employees, including youths age 18–24 that reside within Empowerment Zones and Enterprise Communities (through June 30, 1998). All three of these tax benefits are to some extent available to other urban and rural communities, including Round I Empowerment Zones and Enterprise Communities, so that the total cost of these tax benefits cannot be attributed to the five rural Empowerment Zones.

In addition, Federal agencies are expected to give special preference to Empowerment Zones and Enterprise Communities with legitimate requests for program assistance. State and local governments and private firms and nonprofit are also expected to confer grants or assistance to these places. The new zones, however, will not be eligible for some of the benefits that the first round of Empowerment Zones received, such as the employer wage tax credits, and to date, no Title XX Social Service Block Grants funds are available for the new zones.

The comprehensive strategic planning approach employed by this program is meant to help poor communities identify their development needs and design strategies to address those needs. This type of approach should benefit the communities by helping them to focus their limited resources on their most important community goals and strategies, and it should also give them an advantage in obtaining outside assistance.

If the program works as expected, the communities should benefit through economic and community revitalization, including economic growth in the form of increased employment and income and improved economic self sufficiency (reduction of unemployment, welfare dependency), and improved overall conditions in the community in the form of lower crime rates, less drug dependency, better housing, better education, and improved public and private services available to the population. In addition, as discussed above, empowerment—the capacity of communities to design and implement local strategies for long-term community and economic enhancement—is expected to occur.

Recognizing the experimental character of this new approach, and also its demonstration value for other rural communities in similar circumstances, USDA has collected baseline information on the economic and social conditions that existed in each community at the time the program was inaugurated. In addition, USDA has undertaken a research project with Iowa State University to develop and collect information about the effect of the program on intangible community capacities, such as the extent of community participation in this highly democratic method of promoting community growth. USDA collects and publicizes best practices drawn from among the successes of the existing Empowerment Zones and Enterprise Communities and makes these available to all rural communities through publications and the EZ/EC web site. USDA regularly collects information from each of the Round I Empowerment Zones and Enterprise Communities about the actions they have undertaken and the results achieved, some of which results are reported below. At later stages in the implementation of Round I of the program, USDA will collect information about the overall impacts within the designated communities to evaluate both the extent of the benefits and costs of the program and the conditions under which optimal benefits were achieved.

b. Who is affected:

The residents of the designated Empowerment Zones will be the primary beneficiaries. The statute liberalizes the eligibility rules for the new Round II rural zones. The poverty rate eligibility threshold was higher for Round I, and Indian reservations were excluded. This was changed by statute for Round II. One of the five new rural

zones is eligible based on outmigration, regardless of poverty, and Indian reservations can participate if they meet eligibility criteria. These and other changes in the statute's eligibility provisions should allow more places to be eligible. In addition, the regions surrounding these places are also expected to benefit. The existing statute prohibits development plans from proposing a strategy that actively encourages or assists the relocation of firms or branch plants into the zones. The rule further encourages communities to adopt strategies that complement, rather than compete with, the development of the surrounding region. Also expected to benefit are those places that apply but that do not receive designations (in rural areas, these are called Champion Communities). Such places should benefit through the value of the community partnerships formed and the strategic plans they produced in the process of applying for the program. They are also eligible, along with the designated Empowerment Zones, for certain tax breaks for contributors to HUD-designated Community Development Corporations.

c. Degree of benefits to individuals and society:

The magnitude of the economic benefits that each designated zone community will receive from this program is difficult to predict. Most of the tax incentives are new, as is the program itself. Because the benefits are also affected by the strategies the communities choose in their strategic plans, the benefits might be expected to vary from zone to zone.

If the new Round II zones were to receive benefits like those of the Round I zones, an idea of the magnitude of such benefits is revealed by USDA statistics on Round I zones. As of January 1998, after the three Round I rural Empowerment Zones had completed their first 3 years as EZ's, they had reported a total of $144 million in direct new public and private investment, and 2,000 jobs created or saved. These zones have created a total of 15 job training programs, 6 job training facilities, and trained 442 persons. They have created 20 youth development programs serving 3,375 youths, and 3 educational facilities and 4 heath care facilities have been built or upgraded. The three zones have established or upgraded 18 computer learning centers and have received 3,480 Federal surplus computers. Five revolving loan or microenterprise funds have been created, 44 housing units have been built or rehabilitated, 19 water and waste projects are under construction.

These measures are indicative of recent performance and do not convey the full extent of benefits expected in the long run. A copy of a progress report based on information supplied by program participants is contained in Appendix A (attached).

These zones have used the resources available to them at a pace that will allow them to use these funds throughout the ten-year period of designation. As of January 1998—a little over two years into the implementation of their plans—they had used about a fifth of the Title XX SSBG funds allotted to them—$25 million out of a total of $120 million. These reserve SSBG funds should be able to leverage additional Federal, State, local, and private investments—the leverage ratio of non-SSBG funds to SSBG funds in the first three years averaged about 4.7:1. Thus, activity levels might be expected to pick up in the coming years as the bulk of the SSBG funds are spent. Although their zone designations officially end in the year 2004, they may continue to benefit from this program in the following years, since many of their investments are in infrastructure, training, community development financial institutions, and other forms of capital—including social capital—which should enhance their future productivity long after they stop receiving EZ tax incentives and priority in receipt of Federal funds.

The Round II zones will go through the same strategic planning process as did the Round I zones, and they may be expected to pursue similar comprehensive development strategies, drawing on various sources for funding. Other things being equal, their benefits should be roughly comparable to those of Round I zones. However, the five Round II zones might experience different economic impacts than those of the Round I zones because of the differences in tax incentives and the lack—thus far—of specially allocated Title XX grants that the Round I zones received. The difference in tax incentives might result in greater benefits, since the new zone facility bonds are not subject to the State volume cap and hence are more likely to be issued than the previous, more limited zone facility bonds. The additional $20,000 in expensing should also stimulate more private investment. And, although the employer wage tax credit is no longer available, this might be offset by the Work Opportunity Tax Credit and some of the other new tax incentives. However, if no specially-provided Title XX grant funds are provided to the Round II zones, as is true now, then this would dampen the economic benefits in the new zones. As currently structured, it seems likely that net benefits to Round II zones will be lower than those enjoyed by Round I zones, but it is difficult to estimate the actual amount of economic benefits involved.

The magnitude of the economic benefits will also depend on the extent that State Governments and various Federal agencies are encouraged to give preference to these places in providing grants and loans and regulatory relief. It also depends on the extent that Federal grants are devoted to non-economic purposes, such as reduced crime and drug use, and improved recreational programs.

Most of the program's benefits flow from the statutory aspects of the program and not from the rule itself. As previously noted, this rule pertains primarily to the application and selection process for the zones. The benefits that flow directly from the rule are related to the strategies that are being encouraged through the selection criteria specified in the rule. If successful, these strategies will result in sustainable, long-term development for the selected EZ's. This could lead to similar strategies being encouraged by other Federal and State programs that assist distressed areas, thereby having a more profound effect on society.

C. *Dynamic implications that may affect economic growth:*

Although the program is expected to significantly affect the economies of the designated local zones, in only a very minor way does this program affect dynamic aspects of national economic growth. Since it will tend to add to overall national spending and investment, this could slightly add to inflationary pressures while the economy remains near full-employment and slightly reduce unemployment during recessions. However, because the designated communities tend to have high rates of unemployment, this would dampen any inflationary pressure associated with the program. Moreover, the magnitude of these shifts is not large enough to make much of a difference, nationwide.

It is expected that, in addition to these direct contributions to national economic growth, the comprehensive, long-term, community-based model of development that is employed in this program will serve as a model to Champion Communities and to other rural communities, which may choose to employ similar methods of development in order to achieve some of the same results as the Empowerment

Zones and Enterprise Communities have been able to achieve. If the model should come into widespread application throughout rural America, the net contribution to the national economy could be substantial. Such an impact is unlikely to occur, however, within the period of designation of the Round II Empowerment Zones but would most likely occur over a period of one or two generations.

7. *"User Friendliness":*

Every effort has been made to make this program work for all communities that apply. The regulations allow the communities maximum flexibility in the form that their plans take and the strategies that can be employed. A guidebook will be available to communities to guide them through the application process and to clarify any questions they may have about the program rules and procedures. In addition, lessons learned from Round I should add to the user-friendliness for the Round II zones, as modifications have been made to streamline the applications process and improve the structure of the required strategic plans.

Attachment: Appendix A, Progress Report

BILLING CODE 3410-07-P

USDA

USDA Rural Development

Office of Community Development

Progress Report

Rural Empowerment Zones and Enterprise Communities Initiative

April 8, 1998

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USDA

Preface

The rural Empowerment Zones and Enterprise Communities Initiative (EZ/EC) was created to better serve the citizens of America's impoverished rural communities. Since day one, this program has empowered rural citizens to become active participants and stakeholders in planning their community's economic and social growth.

The 3 rural EZs and 30 ECs in Round I began implementing their strategic plans in 1995, after creating performance benchmarks to chart the success of their programs. Since that time, these communities have been actively engaged in carrying out projects to improve the economic prospects and quality of life of their citizens.

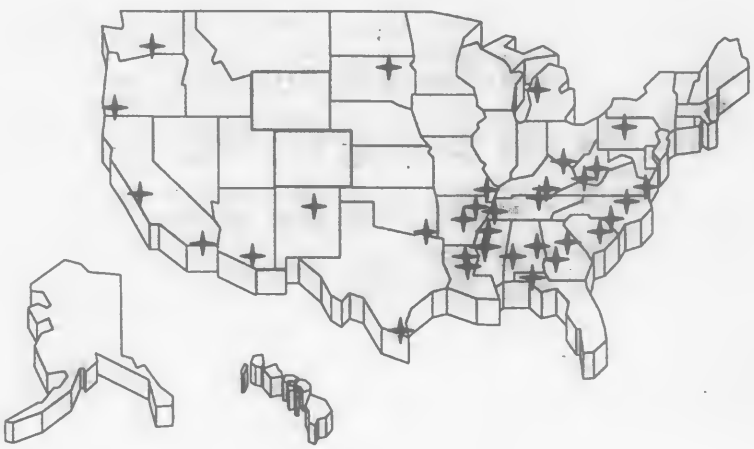
This report provides an interim review of the rural EZ/EC Initiative. Although it reflects barely two years of activity, it is already clear that rural citizens are going back to work, families are moving into safe and affordable housing, schools are being built and renovated, and health care services are more accessible. As these communities continue implementing their strategic plans, larger and more sustainable advances can be expected.

The United States Department of Agriculture (USDA) invites you to participate in this exciting new initiative to fight rural poverty. For further information about the EZ/EC communities, how you can help, or details regarding Round II of the Initiative, please feel free to visit our web site at: **http://www.ezec.gov** or call 1-800-851-3403.

Victor Vasquez
Deputy Administrator
Office of Community Development

1. Rural Empowerment Zones and Enterprise Communities

Location of Rural Empowerment Zones and Enterprise Communities



Rural Empowerment Zones and Enterprise Communities

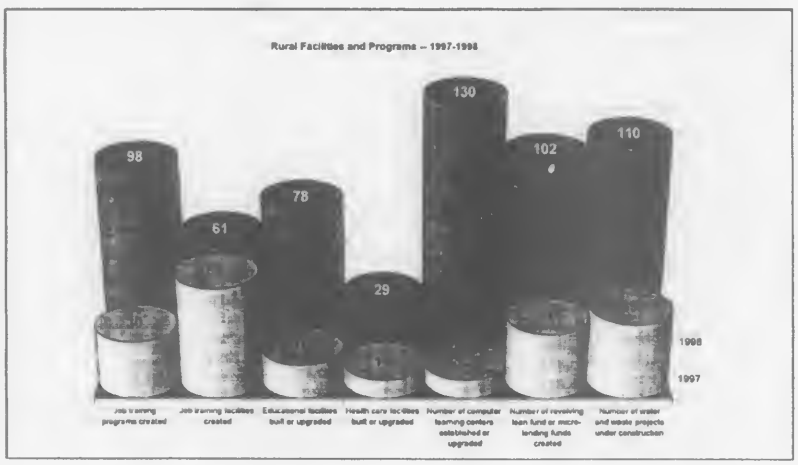
USDA

Empowerment Zones	
Kentucky Highlands EZ	KY
Mid-Delta EZ	MS
Rio Grande Valley EZ	TX

Enterprise Communities	
Chambers County EC	AL
Greene & Sumter Counties Rural EC	AL
East Central Arkansas EC	AR
Mississippi County EC	AR
Arizona Border Region EC	AZ
Imperial County EC	CA
City of Watsonville EC	CA
Jackson County, Florida EC	FL
Crisp/Dooly EC	GA
Central Savannah River Area EC	GA
Northeast Louisiana Delta EC	LA
Macon Ridge EC	LA
Lake County EC	MI
City of East Prairie, MO EC	MO
North Delta Mississippi EC	MS
Halifax/Edgecombe/Wilson EC	NC
Robeson County EC	NC
La Jicarita EC	NM
Greater Portsmouth EC	OH
Southeast Oklahoma EC	OK
Josephine County EC	OR
City of Lock Haven Federal EC	PA
Williamsburg-Lake City EC	SC
Beadle/Spink/South Dakota EC	SD
Fayette County/Haywood County EC	TN
Scott/McCreary Area EC	TN
Accomack-Northampton, Virginia EC	VA
Lower Yakima County Rural EC	WA
Central Appalachia EC	WV
McDowell County EC	WV

2. Accomplishments and Accountability

Now in their third year of strategic plan implementation, rural EZ/ECs are showing rapid accomplishment



Selected Accomplishments of Rural Empowerment Zones and Enterprise Communities

	As of January 1997	*As of January 1998*
Number of jobs created or saved	6,692	9,944
Job training programs created	30	98
Job training facilities created	57	61
Number of persons trained	5,709	14,229
Youth development programs created	21	212
Number of youth served by development programs	4,960	25,448
Health care facilities built or upgraded	10	29
Educational facilities built or upgraded	18	78
Number of computer learning centers established or upgraded	10	130
Number of computers donated	3,626	4,405
Number of revolving loan funds or micro-lending funds created	34	102
Number of housing units built or renovated	1,076	2,140
Number of water and waste projects under construction	39	110

Rural Empowerment Zones and Enterprise Communities

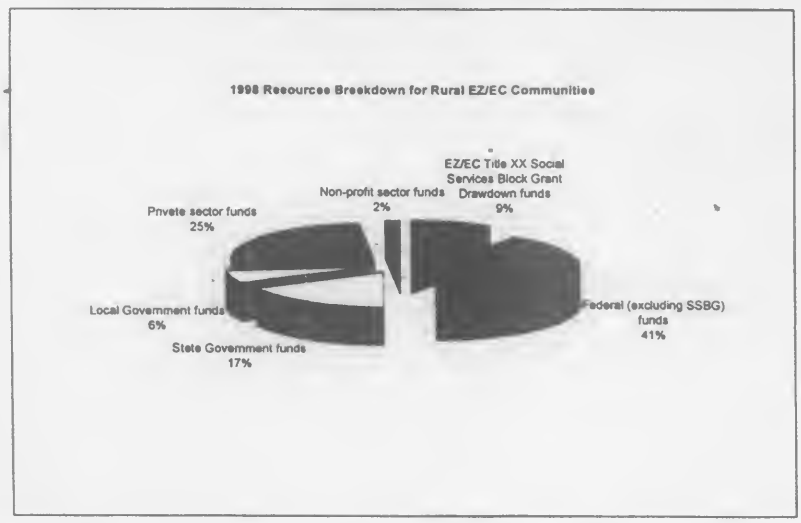
USDA

Sources of Financing for Rural Empowerment Zones and Enterprise Communities (includes in-kind contributions)

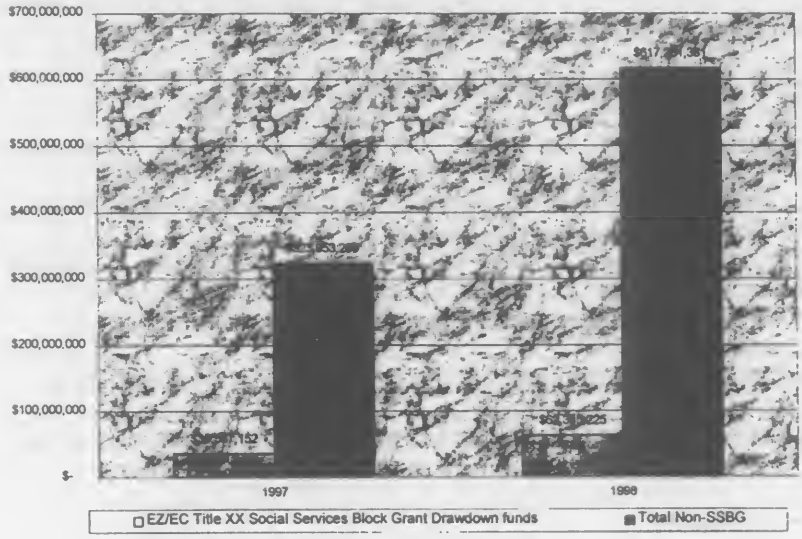
(Dollars in millions)

	As of January 1997	*As of January 1998*
Social Services Block Grants (SSBG)	$35.6	$62.3
Other Federal funds	113.5	276.5
State Government	88.2	117.7
Local Government	28.1	41.0
Private Sector	86.1	170.1
Non-profit	8.1	12.0
Total	*359.5*	*679.6*
Total Other than SSBG	324.0	617.3
Leveraging Ratio of non-SSBG to SSBG funds drawn down	9.1	9.9

Rural EZ/ECs Have Been Resourceful in Leveraging Their EZ/EC SSBG Funds



SSBG Funds Make Up a Small Share of Total Strategic Plan Funding



USDA

Accountability and Oversight of the Rural EZ/EC Program

USDA is implementing a comprehensive evaluation process to capture both the immediate output successes and the long-term changes brought about within these high-poverty communities.

Elements of the Accountability Process

Reporting Systems:

- Weekly reports from EZ/EC communities to USDA Rural Development field staff (Community Development Program Managers)
- Weekly reports from State Community Development Program Managers to Office of Community Development
- Weekly reports from Office of Community Development to Under Secretary for Rural Development
- Fall Report: a narrative statement of progress achieved and obstacles encountered from each community
- Spring Report: a statistical reporting of benchmark outputs collected through a web-based reporting system

Third Party Evaluation:

- An evaluation to measure level of empowerment achieved is being conducted by the North Central Regional Rural Development Center (Dr. Cornelia Flora, project director)

3. USDA Signature Initiatives for Community Empowerment

USDA has established six Signature Initiatives designed to break new ground to ensure sustainable capacity building in rural communities, promote regional cooperation and partnering, and provide Champion Communities with basic technical assistance.

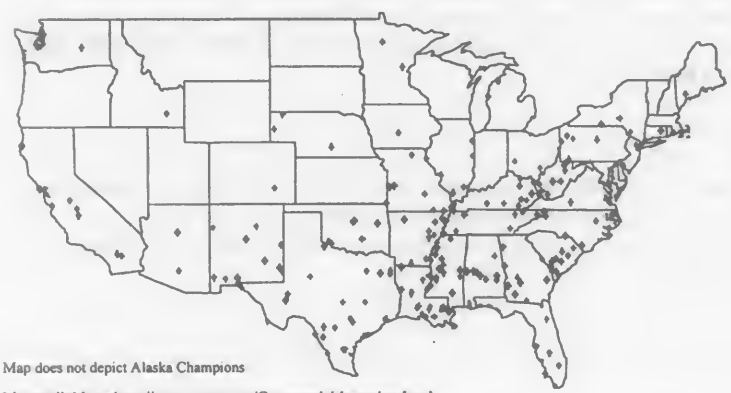
Champion Communities

More than 180 rural communities organized and completed the valuable strategic planning process as part of their application for Round 1 of EZ/EC. To assure that their important work produced continuing benefits to these communities, USDA designated them as "Champion Communities" and provided continuing assistance to them.

Key Features:

- USDA Rural Development has funded more than $100 million in development projects in Champion Communities since 1995
- Other CEB agencies have targeted funds and other initiatives to Champions
- USDA Rural Development has sponsored conferences to train community leaders and promote networking among communities
- USDA provides targeted technical assistance to Champions and gives them preference points in decisions on project funding

Rural Champion Communities



Map does not depict Alaska Champions

List available at http://www.ezec.gov/Communit/champion.html

Rural Empowerment Zones and Enterprise Communities

USDA

National Centers of Excellence

Local capacity building toward economic sustainability is being enhanced through a two-year partnership among four rural colleges and USDA. The four colleges assist EZ/EC communities with strategic plan implementation through training programs and other sources of expertise.

Key Features:

- Each school received $100,000 in seed money from the Fund for Rural America
- Each school received a returning Peace Corps fellow from Illinois State University
- Participating schools have formed a national network to share information and expertise with other isolated rural communities
- The objective is to build a permanent relationship between the community and the college, so as to continue the capacity building and rural development capabilities

Participating Colleges:

- Heritage College, Toppenish, Washington
- Mississippi Valley State University, Itta Bena, Mississippi
- Somerset Community College, Somerset, Kentucky
- University of Texas-Pan American, Edinburg, Texas

National Centers of Excellence: Tribal College Partnership

A related initiative helps tribal communities develop empowerment programs through the technical assistance of Tribal Colleges. With assistance from USDA, the colleges are developing programs of training and community service to address the critical needs of the communities they serve. The initiative responds to President Clinton's Executive Order 13021, which asked federal departments and agencies to integrate American Indian Tribal Colleges into their programs.

Key Features:

- Each school received $50,000 in seed money from USDA for first year operations
- Colleges participate in a national network to share information and expertise
- The objective is to strengthen capacity building relationships between the community and the tribal colleges

Participating Colleges:

- Cankdeska Cikana (Little Hoop) Community College, Fort Totten, North Dakota
- Crownpoint Institute of Technology, Crownpoint, New Mexico
- Fort Peck Community College, Poplar, Montana
- Nebraska Indian Community College, Nibroara, Nebraska

Rural Economic Area Partnership (REAP) Zones

Rural areas in the Northern Great Plains face unique challenges due to their isolation, low-density populations, and changing economic base. Rather than high poverty, these areas are challenged by declining populations, slowing economic activity, and growing difficulty in providing public services. To counter these troubling trends, two REAP Zones were established in multi-county areas of North Dakota.

Key Features:

- Memorandum of Agreement signed by Senator Byron Dorgan, representatives from two REAP Zones, and USDA Rural Development staff in July 1995
- REAP Zones strategically plan and benchmark similarly to EZs and ECs
- USDA Rural Development pledged $10 million over 5 years to each Zone
- To date, USDA has exceeded its pledge, investing over $29 million in the Zones to meet critical needs
- USDA Rural Development provided $75,000 in start-up assistance to the REAP Investment Advisory Committee
- SBA established a One-Stop Capital Shop in Bismarck, North Dakota, to serve the REAP Zones and other North Dakota communities

Southwest Border Regional Initiative

In response to Vice President Gore's challenge that EZs and ECs adopt regional approaches to planning and problem-solving, 19 Empowerment Zones, Enterprise Communities, and Champion Communities from the southwest border region formed the Southwest Border Regional Initiative.

Key Features:

- It includes EZs, ECs, and Champions from Arizona, California, New Mexico, Texas, and Washington (serving migrant workers)
- The goal is to foster sustainable approaches to rural development across the border region

- Partnership has identified education, environment, health, infrastructure, trade and welfare reform as focus issues

Delta Regional Initiative

A similar regional initiative is being started in the Lower Mississippi Delta. Modeled on the Southwest Border Region Initiative, it includes rural and urban EZs and ECs from 219 counties in the seven states that formed the basis for the study in 1990 by the Lower Mississippi Delta Development Commission. The Delta Initiative will join the Southern EZ/EC Forum and the Lower Mississippi Delta Development Center in a cooperative agreement to develop a long-range strategic plan and implement the recommendations from the Lower Mississippi Delta Development Commission report.

Key Features:

- It includes EZ/ECs from the states of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee
- Links the planning and organizational capacity of the Lower Mississippi Delta Development Center with the implementation capacity of Empowerment Zones and Enterprise Communities
- Facilitates cross-community collaboration
- Signing of the Memorandum of Agreement targeted for the Spring of 1998

4. Organizations Partnering with USDA to Support Rural Empowerment Zones, Enterprise Communities and Champions

The following organizations have contributed significant financial, human, or technical resources in support of the rural Empowerment Zones/Enterprise Communities program over the last four years. These represent only a small portion of the total organizational effort in support of EZ/ECs. At the local level, there have been many more organizations—governmental, private sector, and non-profit—making valuable and significant contributions. USDA Rural Development gratefully acknowledges the contributions of all.

- American Association of Enterprise Zones
- American Bankers Association
- American Council on Education
- Annie E. Casey Foundation
- Appalachian Regional Commission
- Community Empowerment Board
- Corporation for National Service
- Ford Foundation
- Foundation for the Mid-South
- Hispanic Association of Colleges and Universities
- Illinois State University
- Kellogg Foundation
- Lower Mississippi Delta Commission
- National Association of Community Action Agencies
- National Association of Development Organizations
- National Association of State Development Agencies
- National Center for Appropriate Technology
- National Congress of Community and Economic Development
- New York University
- North Central Regional Rural Development Center
- Office of the Vice President of the United States
- Small Business Administration
- Southern Rural Development Center
- Southern Rural Development Initiative
- Tennessee Valley Authority
- U.S. Army Corps of Engineers
- U.S. Department of Commerce/NIST, NOAA, and Bureau of the Census

- U.S. Department of Education
- U.S. Department of Health and Human Services/Bureau of Primary Health Care & Office of Rural Health Policy
- U.S. Department of Housing and Urban Development
- U.S. Department of Justice
- U.S. Department of Labor
- U.S. Department of Transportation
- U.S. Environmental Protection Agency
- University of Texas—Pan American
- USDA/Cooperative State Research, Education, & Extension Service
- USDA/Economic Research Service
- USDA/Forest Service
- USDA/National Agricultural Library
- USDA/Natural Resources Conservation Service/RC&D Program
- USDA/Rural Business-Cooperative Service
- USDA/Rural Housing Service
- USDA/Rural Utilities Service
- Winthrop Rockefeller Foundation

Rural Empowerment Zones and Enterprise Communities

USDA

[FR Doc. 98–10156 Filed 4–14–98; 11:38 am]
BILLING CODE 3410–07–C

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice Inviting Applications for Designation of Rural Empowerment Zones

AGENCY: Office of the Secretary, USDA.
ACTION: Notice inviting applications.

SUMMARY: This Notice invites applications from state and local governments, Indian tribal governments, regional planning agencies, non-profit organizations, community-based organizations, or other locally-based organizations on behalf of rural areas nominated for designation as Empowerment Zones (EZs) as this term is defined in this Notice and in an interim rule published elsewhere in today's **Federal Register**. An application may be prepared and submitted by any one of a broad range of entities; however, the rural area in question must be nominated for designation by the state, local and Indian tribal governments having jurisdiction over the nominated area. The interim rule provides guidance which is supplemental to that provided in this Notice and which is necessary for completion and submission of applications.

DATES: Application due date: The deadline for receipt of a complete application is 5 p.m. Eastern Daylight Savings Time, October 9, 1998. Applications received after this date will not be considered. Applications may not be submitted prior to 30 days from the date of publication of the interim rule.

ADDRESSES: Application materials may be obtained from U.S. Department of Agriculture (USDA) Rural Development Offices listed in appendix A to this Notice or by sending an Internet Mail message to "round2.rural@www.ezec.gov".

FOR FURTHER INFORMATION CONTACT: Deputy Administrator, USDA Office of Community Development, EZ/EC Team, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3203, telephone 1–800–851–3403, or by sending an Internet e-mail message to "round2.rural@www.ezec.gov" to obtain information. Information may also be obtained at the following website: "http://www.ezec.gov/round2".

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) on an emergency basis through August 31, 1998 and assigned control numbers 0570–0026 (Application burden) and 0570–0027 (Reporting burden). See the interim rule on "Designation of Rural Empowerment Zones and Enterprise Communities" published elsewhere in this issue of the **Federal Register** for additional information on this subject, including the opportunity to comment on the burden of the information collections.

I. Background

One of the core items of President Clinton's economic proposals is the need to empower America's distressed rural and urban communities. His Empowerment Zone proposal represents a new approach to the problems of distressed communities. It emphasizes a bottom-up community based strategy rather than the traditional top-down bureaucratic approach. It is a strategy to address economic, human, community, and physical development problems and opportunities in a comprehensive fashion.

Title IX of the Taxpayer Relief Act of 1997 authorized the Secretary of the U.S. Department of Agriculture (Secretary) to designate up to five rural Empowerment Zones ("Round II") in addition to those rural empowerment zones and enterprise communities designated by the Secretary in December 1994 pursuant to title XIII of the Omnibus Budget Reconciliation Act of 1993 ("Round I"). Notice of the Round I designations was published on May 10, 1995 (60 F.R. 24828). This Notice invites applications from State and local governments, Indian tribal governments, regional planning agencies, non-profit organizations, community-based organizations, or other locally-based organizations on behalf of rural areas nominated for designation as Empowerment Zones in this second round.

The program is intended to combine the resources of the Federal Government with those of State and local governments, educational institutions and the private and non-profit sectors to implement community-developed strategic plans for economic development. The Federal Government has taken steps to coordinate Federal assistance in support of the Empowerment Zones, including expedited processing and priority funding. To that end, President Clinton issued an Executive Memorandum dated September 9, 1993 establishing a Community Empowerment Board chaired by Vice President Al Gore to ensure the success of the Empowerment Zone initiative.

The first round of Empowerment Zone and Enterprise Community designations made in 1994 featured grants from the U.S. Department of Health and Human Services to States for the designated Empowerment Zones and Enterprise Communities. While similar grant funds have not been authorized for the Round II Empowerment Zones, we anticipate that funding may become available in Fiscal Year 1999.

II. Eligibility

The authorizing legislation specifies certain criteria that must be satisfied in order for an area to be eligible for Empowerment Zone designation, including population, general distress, geographic size and boundary configuration, and poverty rate by census tract (or by block numbering areas when the community is not delineated by census tracts; nominated areas in Alaska and Hawaii have the option of qualifying by block groups). The details of these requirements are described in the interim rule published elsewhere in today's **Federal Register** (interim rule). Unless specified otherwise, the terms used in this Notice, inclusive of the appendices, shall be defined as set forth in the interim rule. All section references refer to the interim rule.

This information must be provided in the application. USDA will accept certifications of the data by the state and local governments, subject to further verification of the data prior to designation as an Empowerment Zone.

III. Designation Factors

The statute specifies three factors to be considered by the Secretary in designating Empowerment Zones: (1) The effectiveness of the strategic plan; (2) the effectiveness of the assurances provided in support of the strategic plan; and (3) other criteria to be specified by the Secretary. Each of these factors is discussed in greater detail in the interim rule. The required form and content of the application and the strategic plan are elaborated upon in this Notice.

IV. Timing and Location of Application Submissions

Application materials may be obtained from USDA Rural Development offices listed in the appendix to this Notice or by sending an Internet e-mail message to: "round2.rural@www.ezec.gov". They are also available at the following website: "http://www.ezec.gov/

round2". An application may be submitted not earlier than 30 days after the date of publication of the interim final rule governing Round II. The deadline for receipt of the complete application is 5 p.m. Eastern Daylight Savings Time, October 9, 1998. Applications received after that time will not be accepted, and will be returned to the sender. As the applications require certifications from the state and local governments, we cannot accept applications sent by FAX or through the internet system. The original application and two paper copies should be sent to: U.S. Department of Agriculture, Office of Community Development, Reporters Building, 300 7th Street, SW, Room 701, Washington, DC 20024.

Applicants will be notified in the event of an incomplete application. Provided that the application is received at the above address with sufficient time before the deadline, applicants will be given an opportunity to provide the missing information to USDA.

V. Notice of Intent To Participate

Prospective applicants should complete and submit a Notice of Intent to Participate substantially in the form provided in appendix B to this Notice. A Notice form is included in the application materials; it may also be obtained by sending an Internet e-mail message to "round2.rural@www.ezec.gov". Applicants may also submit the notice via the internet by filling out the form on-line at the following website: "http://www.ezec.gov/round2". Applicants and other participants may wish to submit the form in order to be placed on the Empowerment Zone and Enterprise Community mailing list. While the notice is not mandatory for participation in the program, USDA encourages the submission of the notice as it will permit the Department to provide prospective applicants with updated information on program requirements as well as information on technical assistance.

VI. Application Materials

A. Application materials available from USDA consist of the following:

(1) Round II application form.

(2) Round II application guide.

B. The Application to be submitted on behalf of nominated rural areas shall include the following ("Application"):

(1) A nomination package including:

(a) Round II application form parts I through IV; and

(b) The required certifications and written assurances contained in § 25.200(b) of the interim rule which are not otherwise included in part III of the Round II application form;

(2) A strategic plan which meets the requirements of the interim rule and the form and content requirements specified in section VII of this Notice; and

(3) Maps. Attach a copy of the 1990 census map that shows the boundaries of:

(a) The local governments discussed in part I of the Application Form (Nomination);

(b) The nominated area; and

(c) Developable sites, if any.

VII. Strategic Plan

A. The strategic plan to be submitted on behalf of the nominated area shall conform with the requirements contained in § 25.202 and § 25.303 of the interim rule. Each major section of the strategic plan should address how the plan will achieve the four key principle objectives contained in § 25.202.

B. The strategic plan must be organized into two separate volumes. Each volume should prominently identify the nominated area and be organized and labeled in the following sections and specified sequence.

C. *Volume I of the Strategic Plan ("Documentation").* Volume I must include the following sections and content:

(1) *Section 1—Participants.*

(a) Applicant and Lead entities: the name, address, description and primary contact person for the entity that will be the lead managing entity for the proposed Empowerment Zone. Clarify whether the applicant is different from the proposed lead managing entity; if so, provide the same information for the applicant entity;

(b) Participating entities: a list of and descriptions of the specific groups, organizations, and individuals participating in the production of the strategic plan, and descriptions of the history of these groups in the community; and

(c) An explanation of how participants in the planning process were selected and evidence that the participants, taken as a whole, are broadly representative of the entire community.

(2) *Section 2—The Planning Process.*

(a) Descriptions of how the participants created and developed the strategic plan;

(b) Identification of two or three topics addressed in the strategic plan that caused the most serious disagreements among participants and a description of how those disagreements were resolved; and

(c) An explanation of how the community residents and key organizations participated in choosing the area to be nominated and why the area was nominated.

(3) *Section 3—Eligibility.*

(a) Include information not otherwise provided in the application form, or use this section if additional space is needed to provide eligibility information; and

(b) Maps and a general description of the nominated area.

(4) *Section 4—Economic and Social Conditions.* Detailed statistical information, including tabular and graphical information, not included in volume II, should be included in this section.

(5) *Section 5—Implementation.* This section should include:

(a) Descriptions of the roles which each participating entity, identified in volume I, section 1, will have in implementing the strategic plan; and

(b) Evidence that key participating entities have the capacity to implement the strategic plan.

(6) *Section 6—Public Information.* This section should include newspaper clippings, photographs, news releases and other materials relating to the community and its strategic planning process.

(7) *Section 7—Letters of Support.* Letters of support which are submitted as part of the Application should be grouped in this section of the strategic plan.

(8) *Section 8—Other Attachments.* Any other materials, including non-standard items such as videotapes, should be included in this section, or where, impractical, should be listed in this section and attached as separate items.

D. *Volume II of the Strategic Plan ("Plan"), Part I.* Volume II must contain four major subparts of which part I must include the following sections and content:

(1) *Section 1—Vision and Values.* The community's strategic vision for change—a statement of what the community would like to be like in the future together with a statement of the community's values which guided its planning process and which will guide its implementation of the strategic plan.

(2) *Section 2—Community Assessment.* A comprehensive assessment of existing conditions and trends in the nominated area in two subsections:

(a) Assessment of Problems and Opportunities. A description and assessment of problems and opportunities. This subsection must identify those baseline conditions which the community wishes to improve as a result of the strategic plan.

It may include priority rankings by the community of problems and opportunities to be addressed by the strategic plan.

(b) Resource Analysis. An assessment of the resources available to the community, including financial, technical, leadership, volunteerism, skills and other community assets which may be tapped in implementing the strategic plan.

(3) *Section 3—Goals.* A statement of a comprehensive and holistic set of goals to be achieved through implementation of the strategic plan throughout the 10-year implementation period. This section should also include an index of topics and related benchmark activities which are incorporated in the strategic plan (education, criminal justice, economic development, housing, health care, water and sewer, etc.) so as to facilitate the sharing of information across Federal agencies such that they may more readily recognize how they may be able to support the Empowerment Zone during the implementation phase.

(4) *Section 4—Strategies.* A statement of the strategies the community proposes to use to achieve its strategic plan, in particular, the principal objectives of economic opportunity and sustainable community development contained in § 25.202 (a)(3) and (a)(4).

E. *Volume II of the Strategic Plan ("Plan"), Part II.* The second major subpart of volume II must include the following sections and content:

(1) *Section 1—Phase I work plan.* The information required pursuant to § 25.403(c)(1) for the initial two years of the designation period.

(2) *Section 2—Phase I operational budget.* The information required pursuant to § 25.402(c)(2) for the initial two years of the designation period.

(3) *Section 3—Uses of EZ/EC SSBG grants:* A detailed explanation of how the applicant proposes to use any Empowerment Zone/Enterprise Community Social Services Block Grant (EZ/EC SSBG) funds that become available to States for use by designated rural Empowerment Zones. General guidelines concerning uses of EZ/EC SSBG funds are included in appendix C to this Notice and on the Internet at http://aspe.os.dhhs.gov/progsys/HHSguide.htm. Applicants are encouraged to review the guidelines.

F. *Volume II of the Strategic Plan ("Plan"), Part III.* The third major subpart of volume II should be titled "Continuous Quality Improvement Plan". Part III should present the community's plan for evaluating and learning from its experiences. It should also detail the methods by which the community will assess its own performance in implementing its benchmarks and the process it will use for revising its strategic plan and benchmark goals. Part III should include the following sections and content:

(1) *Section 1—Participation.* The proposed procedures for assuring continuous, broad based community participation in the implementation of the strategic plan;

(2) *Section 2—Incorporation of experiences.* The methods proposed for incorporating learning from experience gained during implementation of the strategic plan and from information obtained from other sources into revisions of the strategic plan, benchmark goals and implementation methods and procedures;

(3) *Section 3—Benchmark review.* The proposed procedure for reviewing benchmark progress within the community; and

(4) *Section 4—Benchmark amendment.* The proposed procedure for amending and revising benchmark goals and benchmark activities.

G. *Volume II of the Strategic Plan ("Plan"), Part IV.* The fourth major subpart of volume II should be titled "Administration Plan". Part IV should present the community's plan for administering the implementation of the strategic plan. It should include the following sections:

(1) *Section 1—Lead entity.* The name of the proposed lead entity organization, its existing and planned future legal status and authority to receive and administer funds pursuant to Federal and state and other nonprofit programs;

(2) *Section 2—Capacity.* Evidence, including an audited financial statement as of the most recent fiscal year, that the lead entity and other key organizations implementing the strategic plan have the capacity to implement the strategic plan. If the lead entity is not yet established, provide evidence of its proposed capitalization;

(3) *Section 3—Board membership.* The membership of the proposed Empowerment Zone board and the selection procedures;

(4) *Section 4—Partnerships.* The relationship between the EZ board and local governments and other major regional and community organizations operating in the same geographic area;

(5) *Section 5—Public information.* The proposed methods by which citizens of the Empowerment Zone and partnership organizations will be kept informed about the Empowerment Zone's activities and progress in implementing the strategic plan;

(6) *Section 6—Public participation.* The methods and procedures by which the Empowerment Zone proposes to implement the principal objective of community based partnerships pursuant to § 25.202(a)(2).

VIII. Counties Which Meet the Outmigration Test for Purposes of § 25.104(b)(2)(iii) of the Interim Rule

For purposes of volume I, section 3—Eligibility, counties which meet the outmigration test for purposes of § 25.104(b)(2)(iii) of the interim rule are listed in appendix D to this Notice.

IX. Round I and Round II Champion Communities

Round I and Round II applicants which have been granted the status of Champion communities will be notified in writing by USDA.

X. Memorandum of Agreement

It is expected that a Memorandum of Agreement (MOA) will be entered into relating to each designated Round II Empowerment Zone. The MOA shall conform in all material respects to the form of MOA provided in appendix E to this Notice.

XI. Miscellaneous

Empowerment Zone designation does not constitute a Federal action for provisions of the Uniform Relocation Act. However, any activity constituting a Federal action that may result from such a designation may be subject to the provision of this Act, as well as any other statutory or regulatory provisions governing the particular Federal action.

All designation reviews will be conducted in compliance with Federal civil rights laws.

Dated: April _____, 1998.

Dan Glickman,

Secretary of Agriculture.

List of Appendices

A—Rural Development State EZ–EC State Contacts
B—Notice of Intent to Participate
C—EZ/EC SSBG Guidance from HHS
D—Counties which meet the Outmigration test
E—Form of Memorandum of Agreement

Appendix A: EZ/EC State Contacts

Alabama

Chris Harmon, Rural Development, Sterling Center, 4121 Carmichael Road/Suite 601, Montgomery, AL 36106–3683, phone: 334–279–3400, fax: 334–279–3403

Alaska

Frank A. Muncy, Rural Development, 800 W. Evergreen, Suite 201, Palmer, AK 99645–6539, phone: 907–745–2176, fax: 907–745–5398

Arkansas

Shirley Tucker, Rural Development, Federal Building, Room 3416, 700 W Capitol, Little

Rock, AR 72201, phone: 501–324–6284, fax: 501–324–7351

Arizona

Dennis Daniels, Rural Development, 2585 North Grand Avenue, Suite #5, Nogales, AZ 85621, phone: 520–281–1068 (voice), phone: 602–609–0699 (cellular), fax: 520–281–1460

California

Gina Briley, Rural Development, 194 W Main Street/ Suite F, Woodland, CA 95695, phone: 530–668–2000, fax: 530–668–2055

Colorado

Vic Crain, Rural Development, 655 Parfet, Room E–100, Lakewood, CO 80215, phone: 303–236–2801 Ext. 134, fax: 303–236–2854

Delaware/Maryland

Joseph E. O'Neil, Rural Development, 5201 South Dupont Highway, P.O. Box 400, Camden, DE 19934, phone: 302–697–4304, fax: 302–697–4390

Florida/Virgin Islands

Glenn Walden, Rural Development, 4440 N.W. 25th Pl., PO Box 147010, Gainesville, FL 32614–7010, phone: 352–338–3440, fax: 352–338–3452

Georgia

Donnie Thomas, Rural Development, 355 E. Hancock Ave., Stephens Federal Building, Athens, GA 30601–2768, phone: 706–546–2162, fax: 706–546–2152

Hawaii

Ted Matsuo, Rural Development, Federal Building, Room 311, 154 Waianuenue Ave., Hilo, HI 96720, phone: 808–933–3009, fax: 808–933–6901

Idaho

Dale Lish, Rural Development, 745 W. Bridge/Suite H, Blackfoot, ID 83221, phone: 208–785–5840, fax: 208–785–6561

Illinois

Charles Specht, Rural Development, 1817 S. Neil Street, Suite 103, Champaign, IL 61820, phone: 217–398–5412, fax: 217–398–5337

Indiana

Joseph Steele, Rural Development, 5975 Lakeside Blvd., Indianapolis, IN 46278, phone: 317–290–3109, fax: 317–290–3127

Iowa

Dorman Otte, Rural Development, 210 Walnut Street, Federal Bldg./Room 873, Des Moines, IA 50309, phone: 515–284–4152, fax: 515–284–4859

Kansas

Larry Carnahan, P. O. Box 386, Altamont, KS 67330, phone: 316–784–5319, fax: 316–784–5900

Kentucky

James Letcher, Rural Development, 771 Corporate Dr., Suite 200, Lexington, KY 40503, phone: 606–224–7326, fax: 606–224–7347

Louisiana

Mike Taylor, Rural Development, 3727 Government Street, Alexandria, LA 71302, phone: 318–473–7811, fax: 318–473–7829

Maine

Alan C. Daigle, Rural Development, 444 Stillwater Ave., Suite 2, P. O. Box 405, Bangor, ME 04402–0405, phone: 207–990–9168, fax: 207–990–9165

Massachusetts

Richard J. Burke, Rural Development, 451 West St., Amherst, MA 01002, phone: 413–253–4300, fax: 413–253–4347

Michigan

Reginald Magee, Rural Development, 1101 E. Washington, P. O. Box 220, Baldwin, MI 49304, phone: 616–745–8364, fax: 616–745–8493

Minnesota

Deborah Slipek, Rural Development, 410 Farm Credit Services Bldg, 375 Jackson Street, St. Paul, MN 55101–1853, phone: 612–602–7799, fax: 612–602–7824

Mississippi

Jane Jones, Rural Development, 100 W Capital St., Suite 831, Jackson, MS 39269, phone: 601–965–5457, fax: 601–965–4257

Missouri

D. Clark Thomas, Rural Development, 70 W. Parkade Center, Suite 235, Columbia, MO 65203, phone: 573–876–9319, fax: 573–876–0984

Montana

Anthony Preite, Rural Development, 900 Technology Blvd. Suite B, P. O. Box 850, Bozeman, MT 59771, phone: 406–585–2580, fax: 406–585–2565

Nebraska

Dale T. Wemhoff, Rural Development, Norfolk Area Office, 1909 Vicki Lane/Suite 103, Norfolk, NE 68701, phone: 402–371–6193, fax: 402–371–8930

Nevada

Mike Holm, Rural Development, 1390 South Curry St., Carson City, NV 89703–5405, phone: 702–887–1222, fax: 702–885–0841

New Hampshire/Vermont

William W. Konrad, Rural Development, 501 South Street, Bow, NH 03304, phone: 603–226–9331, fax: 603–226–9338

New Jersey

Michael P. Kelsey, Rural Development, Tarnsfield Plaza, Suite 22, 790 Woodland Rd., Mt. Holly, NJ 08060, phone: 609–265–3640, fax: 609–265–3651

New Mexico

Bill Culbertson, Rural Development, 6200 Jefferson NE, Albuquerque, NM 87109, phone: 505–761–4973, fax: 505–761–4976

New York

Marge Evanek, Rural Development, Center Ithaca, Box 142, 171 East State Street, Ithaca, NY 14850, phone: 607–272–3023, fax: 607–275–9624

North Carolina

Debra Nesbitt, Rural Development, 4405 Bland Rd, Suite 260, Raleigh NC 27609, phone: 919–873–2042, fax: 919–873–2075

North Dakota

William Davis, Rural Development, P. O. Box 1737, Bismarck, ND 58502, phone: 701–250–4781, fax: 701–250–4670

Ohio

Allen L. Turnbull, Rural Development, Federal Building, Room 640, 200 North High Street, Columbus OH 43215, phone: 614–469–5400, fax: 614–469–5758

Oklahoma

Sally Vielma, Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, phone: 405–742–1039, fax: 405–742–1101

Oregon

Jack Ware, Rural Development, 1101 Ellen Ave., Medford, OR 97501, phone: 541–776–4293, fax: 541–776–4295

Pennsylvania

Nancy Brewer, 36 Spring Run Road, Rm. 103, Mill Hall, PA 17751, phone: 717–726–3196, ext. 203, fax: 717–726–0064

Puerto Rico

Julio Chevres, Rural Development, P. O. Box 366106, San Juan, PR 00936–6106, fax: 787–281–4993

South Carolina

William Molnar, Rural Development, 1835 Assembly Street, Room 1007, Columbia, SC 29201, phone: 803–253–3249, fax: 803–765–5633

South Dakota

Robert Bothwell, Rural Development, Federal Building, Room 210, 200 Fourth Street SW, Huron, SD 57350–2477, phone: 605–352–1142, fax: 605–352–1146

Tennessee

Tom Mayberry, Jr., Rural Development, 3322 West End Ave., Suite 300, Nashville, TN 37203–1071, phone: 615–783–1308/783–1409, fax: 615–783–1301/1394

Texas

David Gonzalez, Rural Development, 4400 E. Hwy 83, Rio Grande City, TX 78582, phone: 956–487–5576, ext. 202, fax: 956–487–7882

Utah

A. Richard Osmond, Rural Development, Federal Bldg Room 5438, 125 South State St., Salt Lake City, UT 84138, phone: 801–524–3248, fax: 801–524–4406

Vermont/New Hampshire

William W. Konrad, Rural Development, 501 South Street, Bow, NH 03304, phone: 603–226–9331, fax: 603–226–9338

Virginia

Reginald Rountree, Rural Development, 1606 Santa Rosa Road, Richmond, VA 23229, phone: 804–287–1557, fax: 804–287–1786

Washington

Karen Bailor, Rural Development, 1835 Blacklake Blvd. SW, Suite B, Olympia, WA 98512, phone: 360–704–7750, fax: 360–704–7742

Wisconsin

David Gibson, Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, phone: 715–345–7676, fax: 715–345–7669

West Virginia

James Anderson, Rural Development, 4510 Pennsylvania Ave., Big Chimney, WV 25302, phone: 304–965–2712, fax: 304–965–2715

Wyoming

John Cochran, Rural Development, 100 East B, Federal Bldg. Room 1005, Casper, WY 82602, phone: 307–261–6319, fax: 307–261–6327

Appendix B—Notice of Intent To Participate

U.S. Department of Agriculture, Rural Development, Office of Community Development Room 701, 300 Seventh Street, NW, Washington, D.C. 20024

Note: Rural entities may:

(1) Fax this notice to (202) 690–1395;

(2) Submit this notice via e-mail to "round2.rural@www.ezec.gov"; or

(3) Submit it electronically via the following website: "http://www.ezec.gov/round2"

This Notice of Intent to Participate in the Rural Empowerment Zone application process is submitted by the following participating entity:

Location of Nominated Area (list state and counties proposed to be included):

_____

_____

Name & Address of Participating Entity:

_____

_____

Contact & Phone Number, Fax Number and E-mail address:

_____

__ Nominating Entity (check here if applicable)

__ Nominating Entity (if other than named above) (City, State):

_____

_____

Appendix C

The text of this Appendix which follows was provided by the U.S. Department of Health and Human Services:

(1) Background

This appendix includes general guidance about allowed uses of any Round II EZ/EC SSBG funds that may be made available for Round II Empowerment Zones (EZs). It is based on the assumption that any Round II EZ/EC SSBG funding will be subject to the same statutory restrictions as the Round I EZ/EC SSBG grants. The U.S. Department of Health and Human Services (HHS) will issue further guidance regarding any Round II EZ/EC SSBG funds soon after it is authorized to award the funds.

(2) Awards to States

(a) HHS will award Round II EZ/EC SSBG grants to each State that nominated a designated Round II EZ. HHS will award the funds for each Round II EZ to the State agency that typically receives Social Services Block Grants, unless the EZ Lead Entity and its State request HHS to award them to a different agency.

(b) The HHS Terms and Conditions of the Round II EZ/EC SSBG grants will direct the recipient State agency to provide the funds to the appropriate Round II EZ Lead Entity(ies) for activities specified in the EZ's strategic plan and benchmarks. It is expected that the EZs will revise their plans and benchmarks from time to time.

(3) Allowed Uses of Round II EZ/EC SSBG Funds

(a) The Round II EZs may use Round II EZ/EC SSBG funds for a wide variety of programs, services and activities directed at revitalizing distressed communities and promoting economic independence for residents. Allowed programs, services and activities include, but are not limited to:

- Community and economic development programs and efforts to create employment opportunities;
- Job training and job readiness projects;
- Health programs such as public health education, primary health care, emergency medical services, alcohol and substance abuse prevention and treatment programs, and mental health services;
- Human development services such as child, youth and family development programs, services for the elderly, and child care services;
- Education projects such as after-school activities, adult learning classes, and school-to-work projects;
- Transportation services;
- Environmental clean up programs;
- Policing and criminal justice projects such as community policing efforts and youth gang prevention programs;
- Housing programs;
- Projects providing training and technical assistance to the EZ Lead Entity, its board and committee members, and other organizations; and
- Projects to finance community-focused financial institutions for enhancing the availability of credit such as loan funds, revolving loan funds, and micro-enterprise loan funds as well as other activities for easing financial barriers faced by social services entities, housing organizations and other organizations serving EZ residents.

(b) Round II EZs may use the Round II EZ/EC SSBG funds for projects supported in part with other federal, state, local or private funds, and they may allocate a portion of the funds to the State grantee agency for its administrative and grant oversight costs. Round II EZs may not use the funds as the source of local matching funds required for other federal grants.

(c) Round II EZs must ensure that each proposed use of Round II EZ/EC SSBG funds is: directed at one or more of the EZ/EC SSBG statutory goals; included in the strategic plan; structured to benefit EZ residents; and in compliance with all applicable federal, state and local laws and regulations.

(d) *EZ/EC SSBG Statutory Goals:* The statutory goals for uses of EZ/EC SSBG funds are as follows:

(1) Achieving and maintaining economic self-support for residents, to help them develop and retain the ability to support themselves and their families economically;

(2) Achieving and maintaining self-sufficiency for residents, to enable them to become and remain able to care for themselves in daily activities and in the long-term; and

(3) Preventing Neglect and Abuse and Preserving Families, to protect children and adults, who are unable to protect themselves from neglect, abuse or exploitation, and to preserve, rehabilitate or reunite families living in the designated neighborhoods.

(e) *Strategic Plan:* All programs, services and activities financed in whole or in part with Round II EZ/EC SSBG funds must be included in the strategic plan and benchmarks. Each project description must indicate the EZ/EC SSBG statutory goal it is attempting to achieve and how it will benefit EZ residents.

(f) *Resident Benefit:* All programs, services and activities financed in whole or in part with Round II EZ/EC SSBG funds must be structured to benefit EZ residents; the programs, services and activities may also benefit nonresidents.

(g) *EZ/EC SSBG Statutory Program Options:* To the extent consistent with the local strategic vision, localities may use Round II EZ/EC SSBG funds to finance programs, services and activities for addressing any of the following broad statute-based "program options." EZs that use the funds for any of the program options will have more flexibility in uses of funds. (See section (h) below). The EZs are not required to use the funds for the program options, and may use Round II EZ/EC SSBG funds to finance programs, services and activities addressing other issues. The program options are as follows:

(1) To provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for residents, particularly for pregnant women and mothers and their children;

(2) To support:

(A) Training and employment opportunities for disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) Nonprofit organizations such as community and junior colleges providing short-term training courses for disadvantaged adults and youths about entrepreneurism and self-employment, and other types of training that will promote individual self-sufficiency and the interests of the community.

(3) To support projects designed to promote and protect the interests of children and families outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) To support:

(A) Services designed to promote community and economic development and job support services such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) Emergency and transitional housing and shelters for families and individuals; or

(C) Programs that promote home ownership, education, and other routes to economic independence for families and individuals.

(h) To the extent a program, service or activity in the strategic plan and benchmark

document is a statutory program option listed in section (g) above, the EZ may use the Round II EZ/EC SSBG funds to implement that activity including to:

(1) purchase or improve land or facilities;

(2) make cash payments to individuals for subsistence or room and board;

(3) make wage payments to individuals as a social service;

(4) make cash payments for medical care; and

(5) provide social services to institutionalized persons.

(i) To the extent a program, service or activity in the strategic plan and benchmark document is *not* a statutory program option listed in section (g) above, the EZ may use Round II EZ/EC SSBG funds for the following purposes as a component of that activity only after receiving approval from the U.S. Department of Health and Human Services:

(1) purchase or improve land or facilities;

(2) make cash payments to individuals for subsistence or room and board;

(3) make wage payments to individuals as a social service;

(4) make cash payments for medical care; or

(5) provide social services to institutionalized persons.

(j) To the extent a program, service or activity in the strategic plan and benchmark document is not one of the program options listed in section (g) above, the plan must include a statement explaining why the locality chose that project.

Appendix D

Counties (including other geographic areas, as applicable) which have demonstrated outmigration of not less than 15 percent over the period 1980–1994 as reported by the U.S. Bureau of the Census.

Alabama

Conecuh County
Dallas County
Greene County
Lowndes County
Macon County
Perry County
Wilcox County

Alaska

Aleutians West Census Area
Bristol Bay Borough
Southeast Fairbanks Census Area
Wade Hampton Census Area
Yukon-Koyukuk Census Area

Arizona

Greenlee County

Arkansas

Arkansas County
Chicot County
Desha County
Lee County
Mississippi County
Monroe County
Phillips County
St. Francis County
Woodruff County

Colorado

Baca County
Conejos County
Jackson County
Kiowa County
Lake County
Logan County
Mineral County
Moffat County
Otero County
San Juan County
Sedgwick County
Washington County

Florida

Hardee County

Georgia

Calhoun County
Early County
Miller County
Randolph County
Terrell County
Turner County

Idaho

Bear Lake County
Butte County
Caribou County
Clark County
Clearwater County
Elmore County
Shoshone County

Illinois

Alexander County
Mason County
Pulaski County
Stark County
Warren County

Indiana

Miami County

Iowa

Adams County
Audubon County
Buchanan County
Cherokee County
Chickasaw County
Clay County
Clinton County
Crawford County
Emmet County
Fayette County
Floyd County
Franklin County
Greene County
Grundy County
Hancock County
Humboldt County
Jackson County
Kossuth County
Lyon County
Osceola County
Palo Alto County
Pocahontas County
Shelby County
Webster County

Kansas

Barber County
Barton County
Decatur County
Doniphan County
Geary County
Gove County
Graham County
Haskell County
Jewell County
Morton County
Ness County
Osborne County
Rawlins County
Rice County
Rooks County
Rush County
Scott County*
Sheridan County
Sherman County
Stanton County
Trego County
Wallace County
Wichita County

Kentucky

Bell County
Breathitt County
Floyd County
Fulton County
Hardin County
Harlan County
Leslie County
Letcher County
Martin County
Perry County
Pike County

Louisiana

Cameron Parish
Catahoula Parish
Concordia Parish
East Carroll Parish
Iberville Parish
Madison Parish
Morehouse Parish
Red River Parish
Richland Parish
St. Mary Parish
Tensas Parish
Vernon Parish

Maine

Aroostook County

Michigan

Iosco County
Luce County
Marquette County

Minnesota

Big Stone County
Cottonwood County
Faribault County
Freeborn County
Jackson County
Kittson County
Lac qui Parle County
Lake County
Lincoln County
Pennington County
Red Lake County
Redwood County
Renville County
Swift County
Traverse County
Wilkin County
Yellow Medicine County

Mississippi

Adams County
Bolivar County
Claiborne County
Coahoma County
Holmes County
Humphreys County
Issaquena County
Jefferson County
Leflore County
Noxubee County
Quitman County

Sharkey County
Sunflower County
Tallahatchie County
Tunica County
Warren County
Washington County
Yazoo County

Missouri

Knox County
Mississippi County
Pemiscot County
Pulaski County

Montana

Big Horn County
Carter County
Daniels County
Dawson County
Deer Lodge County
Fallon County
Garfield County
Hill County
Judith Basin County
Liberty County
McCone County
Meagher County
Petroleum County
Pondera County
Powder River County
Prairie County
Richland County
Roosevelt County
Rosebud County
Sheridan County
Toole County
Treasure County
Valley County
Wibaux County

Nebraska

Antelope County
Arthur County
Banner County
Blaine County
Boone County
Box Butte County
Boyd County
Brown County
Cedar County
Cuming County
Frontier County
Garden County
Grant County
Hayes County
Hitchcock County
Holt County
Hooker County
Keya Paha County
Kimball County
Knox County
Lincoln County
Logan County
Loup County
Morrill County
Nuckolls County
Red Willow County
Rock County
Sioux County
Stanton County
Thomas County
Thurston County
Wheeler County

New Mexico

Cibola County
Guadalupe County
Harding County
Lea County
McKinley County
Union County

North Dakota

Adams County
Benson County
Billings County
Bottineau County
Bowman County
Burke County
Cavalier County
Dickey County
Divide County
Dunn County
Eddy County
Emmons County
Foster County
Golden Valley County
Grant County
Griggs County
Hettinger County
Kidder County
LaMoure County
Logan County
McHenry County
McIntosh County
McKenzie County
McLean County
Mercer County
Mountrail County
Oliver County
Pembina County
Pierce County
Renville County
Sargent County
Sheridan County
Sioux County
Slope County
Stark County
Steele County
Stutsman County
Towner County
Walsh County
Ward County
Wells County
Williams County

Oklahoma

Beaver County
Blaine County
Cimarron County
Ellis County
Harmon County
Harper County
Jackson County
Kingfisher County
Major County
Roger Mills County
Texas County
Tillman County
Washita County
Woods County
Woodward County

Oregon

Harney County
Sherman County

Pennsylvania

Cameron County

South Carolina

Bamberg County
Dillon County
Marlboro County

South Dakota

Buffalo County
Campbell County
Corson County
Day County
Deuel County
Dewey County
Douglas County
Edmunds County
Faulk County
Gregory County
Haakon County
Hand County
Hanson County
Harding County
Hyde County
Jackson County
Jerauld County
Jones County
Lyman County
McPherson County
Mellette County
Perkins County
Potter County
Roberts County
Sanborn County
Shannon County
Spink County
Sully County
Walworth County
Ziebach County

Texas

Andrews County
Bailey County
Briscoe County
Brooks County
Castro County
Cochran County
Collingsworth County
Cottle County
Crane County
Crockett County
Crosby County
Culberson County
Dawson County
Deaf Smith County
Dickens County
Dimmit County
Fisher County
Floyd County
Foard County
Garza County
Glasscock County
Gray County
Hale County
Hall County
Hansford County
Hardeman County
Hemphill County
Hutchinson County
Jim Hogg County
Karnes County
Kenedy County
Kent County
King County
Kleberg County
Lamb County
Lipscomb County
Lynn County
Matagorda County
Motley County
Ochiltree County
Parmer County
Pecos County
Reagan County
Reeves County
Refugio County
Roberts County

Shackelford County
Sherman County
Stonewall County
Sutton County
Swisher County
Terrell County
Terry County
Upton County
Ward County
Wheeler County
Winkler County
Yoakum County
Zavala County

Utah

Carbon County
Daggett County
Duchesne County
Emery County
Grand County
Rich County
San Juan County

Virginia

Alleghany County
Bath County
Buchanan County
Wise County
Covington City
Norton City

West Virginia

Boone County
Clay County
Fayette County
Logan County
McDowell County
Mingo County
Webster County
Wetzel County
Wyoming County

Wyoming

Big Horn County
Carbon County
Converse County
Fremont County
Hot Springs County
Platte County
Sweetwater County
Washakie County
Weston County

Appendix E—Form of Memorandum of Agreement; Rural Empowerment Zones and Enterprise Communities

This Agreement among the United States Department of Agriculture (USDA), the State of _____ and the Empowerment Zone Lead Entity relating to the Rural Empowerment Zone known as _____, is made pursuant to the Internal Revenue Code (title 26 of the United States Code) as amended by title IX of the Taxpayer Relief Act of 1997 and title XIII, subchapter C, part I of the Omnibus Budget Reconciliation Act of 1993.

In reliance upon and in consideration of the mutual representations and obligations herein contained herein, the applicable statute and part 25 to 7 CFR, USDA, the State and the Empowerment Zone agree as follows:

The Rural Empowerment Zone boundaries are as follows: Census Tracts _____, _____, _____ [as such boundaries may be modified] in accordance with maps provided in the application for designation. The term of the designation as a rural Empowerment Zone is effective from [designation date] to December 31, _____, unless sooner revoked.

The State and the Empowerment Zone agree to abide by the following:

1. The State and the Empowerment Zone will comply with the requirements title XIII, subchapter C, part I of the Omnibus Budget Reconciliation Act of 1993 as modified by the Taxpayer Relief Act of 1997, and the regulations appearing at 7 C.F.R. part 25 and any future regulations.

2. [if applicable] The State and the Empowerment Zone will comply with such further statutory, regulatory and contractual requirements as may be applicable to the receipt and expenditure of Social Services Block Grant funds, pursuant to title XX of the Social Security Act, currently administered by the Department of Health and Human Services.

3. The State and the Empowerment Zone will comply with all elements of the USDA approved application for designation, including the strategic plan, submitted to USDA pursuant to 7 C.F.R. part 25 ("strategic plan") and all assurances, certifications, schedules or other submissions made in support of the strategic plan or of this Agreement.

4. The State and the Empowerment Zone will submit with each 2-year workplan required under 7 C.F.R. § 25.403 documentation, in form and substance satisfactory to the Secretary, sufficient to identify baselines, benchmark goals, benchmark activities and timetables for the implementation of the strategic plan during the applicable 2 years of the workplan.

5. Pursuant to the strategic plan, the lead entity for the Empowerment Zone known as _____ [name of lead entity] _____, located at _____ [address] _____, is responsible for the implementation of the strategic plan. The current director of the lead entity, who is duly authorized to execute this agreement, is _____ [name] _____.

6. [if applicable] The use of EZ/EC title XX funds will be directed by the lead entity, in accordance with the strategic plan. The State will distribute the funds according to the directives of the lead entity, provided that such actions are consistent with the USDA approved strategic plan.

7. The lead entity agrees to timely comply with the reporting requirements contained in 7 C.F.R. part 25, including reporting on progress made in carrying out actions necessary to implement the requirements of the strategic plan and any assurances, certifications, schedules or other submissions made in connection with the designation.

8. The lead entity agrees to submit to periodic performance reviews by USDA in accordance with the provisions of 7 C.F.R. §§ 25.402 and 25.404. Upon request by USDA, the lead entity will permit representatives of USDA to inspect and make copies of any records pertaining to matters covered by this Agreement.

9. Each year after the execution of this Agreement, the lead entity will submit updated documentation sufficient to identify baselines, benchmark goals and activities and timetables for the implementation of the strategic plan during the following 2 years. Upon written acceptance from USDA, such documentation shall become part of this Agreement and shall replace the documentation submitted previously, for purposes of operations during the following 2 years.

10. All benchmark goals, benchmark activities, baselines, and schedules approved by the Empowerment Zone after a full community participation process (which must be documented and which may be further amended or supplemented from time to time), will be incorporated as part of this Agreement. All references to the strategic plan in this memorandum of agreement shall be deemed to refer to the strategic plan as modified in accordance with this paragraph.

11. This Agreement shall be a part of the strategic plan.

12. Amendments to the strategic plan may be made only with the approval of the Empowerment Zone and USDA. The lead entity must demonstrate to USDA that the local governments within the Empowerment Zone were involved in the amendment process.

13. All attachments and submissions in accordance herewith are incorporated as part of this agreement.

This Agreement is dated _____.

State Government: State of _____

By: _____ [official authorized to commit the state] _____

Title:

Address:

Empowerment Zone [Name of Empowerment Zone]

By: _____

Title:

Address:

Lead entity: [Name of Lead entity]

By: _____

Title:

Address:

Federal Government: United States Department of Agriculture

By: _____

Title:

Address:

[FR Doc. 98–10157 Filed 4–14–98; 11:38 am]

BILLING CODE 3410–07–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 598

[Docket No. FR–4281–I–04]

RIN 2506–AB97

Empowerment Zones: Rule for Second Round Designations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule adds new regulations to govern the designation of fifteen urban areas as Empowerment Zones. This new rule is being published to implement the changes made by sections 952–954 of the Taxpayer Relief Act of 1997. That statute authorized designation of a second round of Empowerment Zones, which receive special tax benefits for area businesses. (The Act also authorized HUD to designate two additional EZs under the criteria specified for the first round, for which a separate final rule has been issued.) By specifying the new eligibility criteria to be used in designating a second round of EZs, this rule lays the foundation for designations to be made in response to applications submitted in response to the Notice Inviting Applications published elsewhere in this issue of the **Federal Register**.

DATES: Effective date: May 18, 1998.

Comment due date: Comments must be submitted by June 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Regulations Division, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. (In addition, see the Paperwork Reduction Act heading under the Findings and Certifications section of this preamble regarding submission of comments on the information collection burden.)

FOR FURTHER INFORMATION CONTACT: Elaine Braverman, Empowerment Zone/Enterprise Community Initiative, Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–6339. (This telephone number is not toll-free.) For hearing-and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

Section 13301 of the Omnibus Budget Reconciliation Act of 1993 created a new Subchapter U of the Internal Revenue Code, which authorized the Secretary of Housing and Urban Development (HUD) to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities. It also authorized the Secretary of Agriculture to designate not more than three Empowerment Zones. The two Departments issued separate but parallel interim rules, following a standard format, on January 18, 1994 (59 FR 2700). Notices Inviting Applications were published, and the agencies designated the maximum number of EZs and ECs authorized. HUD issued a final rule, making only technical changes to the interim rule, on January 12, 1995 (60 FR 3034). At that time, HUD responded to comments received on the interim rule. With respect to comments made concerning the designation process, HUD generally responded that, because the designations had already been made under the interim rule, changes to those provisions would not have any effect, but the suggested changes would be considered in any future rulemaking to implement any additional Congressional authorization for new designations. HUD has reconsidered the changes requested, as discussed in the preamble to that final rule, and has decided that they are inappropriate or unnecessary.

Section 952 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788, enacted on August 5, 1997) (the 1997 Act) amended section 1391 of the Internal Revenue Code (26 U.S.C. 1391) to add a new paragraph (g), that changed the eligibility criteria for the 20 additional Empowerment Zones, 15 of which are to be in urban areas, designated by the Secretary of HUD and 5 of which are to be in rural areas, designated by the Secretary of Agriculture. The Act expanded the eligibility criteria slightly, provided different tax incentives applicable to the new EZs, and made other changes affecting EZs, thus necessitating changes to the implementing regulations. Section 954 of the 1997 Act amended section 1392 to revise eligibility criteria with respect to Alaska and Hawaii, which changes are also reflected in this interim rule, and section 701 expressly designated a special Empowerment Zone in the District of Columbia, to last five years instead of the usual ten.

Two specific changes in the eligibility criteria in the 1997 Act for new EZs were an increase in the size of zones and elimination of the requirement that at least half of the nominated area consist of census tracts with poverty rates of 35 percent. The requirements for at least a 25 percent poverty rate for 90 percent of the area's census tracts and at least a 20 percent poverty rate for the remainder continue to apply, but census tracts with populations under 2,000 get special consideration for satisfying the 25 percent rate. The requirement that an urban EZ must be located entirely within no more than two contiguous States remains unchanged.

The tax benefits that apply to the Round II EZs are the following: tax-exempt bond financing, welfare-to-work tax credit, work opportunity tax credit, environmental cleanup cost deduction ("brownfields" tax incentive), and up to $20,000 of additional section 179 (accelerated depreciation) expensing. The Round II EZs are not eligible for the present-law wage credit enjoyed by the Round I EZs.

The strategic plan submitted by an applicant must describe its plans for using these tax benefits, in accordance with § 598.215(b)(4)(ii). (For a full description of the tax benefits, see IRS Publication 954, "Tax Incentives for Empowerment Zones and Other Distressed Communities.")

When the first round of designations was being made, there was funding authorized and appropriated for the U.S. Department of Health and Human Services to award EZ/EC SSBG grants for the Empowerment Zones and Enterprise Communities. It is anticipated that such funding may become available for Round II designees in Fiscal Year 1999. See the Appendix, "Eligible Uses of EZ/EC SSBG Funds," for guidance on uses of these funds.

For the current fiscal year, however, there is $1.5 million in HUD funding for planning grants and approximately $502 million in tax benefits. Each of the 15 areas that receives designation under this rule as an EZ will be awarded a $100,000 planning grant.

II. New Rule

A. Statutory Changes

The principal change that affects all areas to be nominated for the second round of designations is the replacement of the existing criteria

concerning poverty rate. For the first round of designations, there were three elements of the poverty rate criterion of eligibility for Empowerment Zone designation: (1) The poverty rate for *each* census tract must be at least 20 percent; (2) the poverty rate for *at least 90 percent of the census tracts* must be at least 25 percent; and (3) the poverty rate for *at least 50 percent of the census tracts* must be at least 35 percent. The areas designated under the revised authority are subject to only the first two of these poverty rate criteria. (See § 598.115(a).)

A new provision excepts up to three "developable sites"—parcels that may be developed for commercial or industrial purposes—from satisfying the two poverty rate criteria that otherwise would be applicable, but restricts the size of the area given this special poverty rate treatment to a total of 2,000 acres. There may be up to three noncontiguous developable sites within a nominated area, which themselves may be noncontiguous with the parcels that do meet the poverty criteria.

Treatment of census tracts with small populations has been changed. Now they must satisfy an additional condition to be treated as if they have a poverty rate of at least 25 percent (the second criterion described above): The *census tract must be contiguous to one* or more other census tracts that have a poverty rate of at least 25 percent, determined without regard to this exception. (See § 598.115(b)(2).)

For the first round of designations, the statute (at section 1391(e)(5)) required that States and local governments certify that no portion of the area nominated is already included in an EZ or in an EC or in an area otherwise nominated for designation. For this round, the statute was amended. We interpret the amendment to permit nomination of areas that were contained in areas nominated for EZ or EC status that were not granted such status. In other words, the certification for Round II requires that the nominated area contain no portion of an area that is part of either an EZ or an area currently being nominated for EZ designation. (See § 598.210(c).)

In the first round, Indian reservations were not permitted to be included in an Empowerment Zone. The statute has been changed to permit them to be included, and to be treated as nominated by both a State and a local government if it is nominated by the reservation governing body. Section 598.500 implements this change, permitting the nomination of the tribal governing body to be treated as a nomination by both a State and a local government where the area included in the nomination is entirely within the reservation. If part of the area nominated is outside the Indian reservation, the State would be required to participate in the nomination. The statute references a determination by the Secretary of the Interior with respect to the Indian reservation's governing body. HUD interprets this to mean that the Indian organizations from whom HUD should accept nominations are those that constitute Federally recognized tribes, those specified by the Department of the Interior. This interpretation is reflected in the new section.

The States of Alaska and Hawaii are given special treatment with respect to satisfying the distress, size, and poverty rate criteria in the revised statute for Round II designations. A nominated area is treated as satisfying those requirements if *20 percent or more of the families of each census tract* have incomes that are no more than 50 percent of the statewide median family income. (See § 598.515.)

The District of Columbia also is singled out in the statute for separate designation. Section 701 of the Act designates the existing Empowerment Zone in DC as the DC special Empowerment Zone, with the addition of all other census tracts for which the poverty rate is at least 20 percent. It has special provisions concerning the issuance of bonds during the period of January 1, 1998 through December 31, 2002, and concerning treatment of capital gains on DC Zone assets. These special provisions for the District of Columbia are not included in this rule, since they are unique to DC. They are being implemented directly, as specified in the statute. This special EZ status does not disqualify the District of Columbia from seeking designation as a standard EZ, which provides benefits over a ten year period.

B. Policy Changes

The language of the rule is being revised to link the EZs to moving people from welfare to work, since that has become a high priority after the enactment of welfare reform legislation. See § 598.2.

C. Clarifying Changes

Some terminology used in part 597, the current rule, such as "population census tract" seems confusing, and so is modified when it is replicated in this proposed rule. This rule applies only to Round II designations, which do not include Enterprise Communities designations. Consequently, the references to Enterprise Communities do not appear in this new part.

The section on evaluating the strategic plan that was contained in the rule for Round I has been removed. That level of detail will be provided in the Notice Inviting Applications for Round II. The selection criteria used in making the designations, however, remain in the rule, in § 598.305. The heading has been changed to "Designation factors." That section echoes the statute in providing that HUD will choose among applicants that satisfy the eligibility criteria by evaluating the quality of the strategic plan and other factors to be specified in the Notice Inviting Applications.

D. Funding Differences

In Round I, the U.S. Department of Health and Human Services (HHS) awarded EZ/EC SSBG funds to States for each designated Round I EZ and EC. The HUD rule for Round I included guidance about use of those grant funds. Similar grant funding has not been authorized for Round II. If grants are authorized for Round II, HHS will issue guidance about those funds.

E. Corresponding Sections Between New Rule and Old Rule

The following chart shows the sections of this new part 598 that correspond to the sections of part 597:

Part 598	Part 597
598.1 Applicability and scope	597.1 Applicability and scope
598.2 Objective and purpose	597.2 Objective and purpose
598.3 Definitions	597.3 Definitions
598.4 Secretarial review . . .	597.4 Secretarial review . . .
598.100 Eligibility requirements	597.100 Eligibility requirements . . .
598.105 Data used for elig . . .	597.101 Data utilized for eligibility & 597.503 Use of census data
598.110 Tests of pervasive pov . . .	597.102 Tests of pervasive poverty, . . .
598.115 Poverty rate	597.103 Poverty rate

Part 598		Part 597	
598.200	Who nominates an area . . .	597.200(a)&(b)	Nominations by State and . . .
598.205	What are the requirements . . .	597.202	Submission of nominations for . . .
598.210	What certifications must the . . .	597.200(a)(4), 597.202(b)	Submission of nom . . .
598.215	What are the purpose and content . . .	597.200(c)&(d)	Nominations by State and . . .
598.300	Procedure for submitting . . .	597.300	HUD action and review of nomin . . .
598.305	Designation factors . . .	597.301	Selection factors for designation . . .
598.400	HUD grants for planning . . .	NEW	
598.405	Environmental review	NEW	
598.410	Public access to materials . . .	NEW	
598.415	Reporting	597.400	Reporting
598.420	Periodic progress determinations	597.401	Periodic performance reviews
598.425	Validation of designation	597.402	Validation of designation
598.430	Revocation of designation	597.403	Revocation of designation
598.500	Indian Reservations	597.500	Indian Reservations
598.505	Governments	597.501	Governments
598.510	Nominations by EDCs or DC	597.502	Nominations by EDCs or DC
598.515	Alaska and Hawaii	NEW	

III. Findings and Certifications

Justification for Interim Rule

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1.)

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, because advance solicitation of comment is both unnecessary and contrary to the public interest.

The Department has already published a rule for notice and comment on the subject of designation of Empowerment Zones, which was codified at 24 CFR part 597. This new rule to implement a second round of designation of Empowerment Zones is patterned on the prior rule. The major differences between this rule and the earlier rule are based on statutory changes, which leave virtually no room for exercise of discretion. Other additions to the rule reflect HUD's experience with the first round, clarifying the expectations of the parties to reflect actual experience. These changes are not controversial and, therefore, do not signal a necessity for advance public comment.

HUD's finding that it would be contrary to the public interest to delay the effectiveness of the rule is based on the practical necessity of preparing an application for designation as an empowerment zone within the timeframe set by the authorizing statute. The designations are required by the statute (section 1391(g)(2)) to be made before January 1, 1999. The governmental entities and other entities that may work with them in partnership to develop an application for designation need to know the requirements of the program in time to develop their strategic plans and apply for designation. Delay in prescribing the criteria for designating new empowerment zones would delay the development of these cooperative efforts and make it extremely difficult for applicants to develop their strategic plans in a timely fashion.

For these reasons, HUD believes that an interim rulemaking is justified. HUD is soliciting public comments on this rule and will consider these comments in the development of a final rule.

Paperwork Reduction Act

The information collection requirements contained in this rule, as described in §§ 598.200, 598.205, 598.210, 598.215, 598.415, and 598.430, and the implementing application forms, have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0148. This approval has been granted on an emergency basis through August 31, 1998. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

In addition, HUD will seek an extension of this approval for these information collections. Therefore, HUD asks for comments regarding the information collections contained in the sections of this rule stated above. At the end of the comment period, HUD will submit the proposed information collections to OMB for approval.

Comments regarding the information collections contained in the rule must be submitted by June 15, 1998. Comments on these information collections should refer to the proposal by name and/or OMB control number and must be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7230, Washington, DC 20410.

Specifically, comments are solicited from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The following table identifies the components of the information collection:

Type of collection	Section of 24 CFR affected	Number of respondents	Frequency of response	Est. ave. response time (hrs.)	Annual burden hrs.
Application	598.200 598.205 598.210 598.215	225	1	50	11,250
Periodic Reporting	597.400 598.415	87	1	15	1,305
Response to Warning Letter	597.403 598.430	5	1	20	100

Total Burden—12,655 hours per year.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities. It merely authorizes them to seek designation as Empowerment Zones, as authorized by statute.

The burdens placed on applicants derive from the statute, and primary among them is the requirement for a strategic plan. The entity responsible for preparing a strategic plan for HUD funds for a metropolitan area is the local government that generally would be seeking the nomination of an area, not the small businesses that are located or could be located within the area. A small government is defined by the Small Business Administration as one that has a population of less than 50,000. It is possible that a government of that size will seek designation for an area within its boundaries, if it is part of a Metropolitan Statistical Area, as required by the statute. The contents of such an entity's strategic plan would be expected to reflect its size, not the size of a larger applicant.

HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. Therefore, HUD is soliciting recommendations for how these small entities might fulfill the purposes of the rule in a way less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that, although this rule may have a substantial direct effect on the States or their political subdivisions that are designated as Empowerment Zones, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States, local, and Tribal governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Unfunded Mandates

Executive Order 12875 calls for Federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute that would create a mandate on a State, local, or Tribal government, unless the agency provides funds for complying with the mandate or the agency first consults with affected State, local, and Tribal governments. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule just authorizes States, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones, which permits special tax treatment of business activities within the areas and may make the areas eligible for other government benefits.

HUD has, nonetheless, had regular contact with the representatives of the already designated EZs and ECs concerning the effect of the statutory changes and on possible means for implementation. In addition, individual citizens, academicians, and members of Congress have inquired about the possible resolution of issues they identified with respect to implementing the statutory changes. All of the information and views provided have been considered in the development of this rule.

Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule after its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division of the Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.244.

List of Subjects in 24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and record keeping requirements, Urban renewal.

Accordingly, for the reasons set forth in the preamble, a new part 598 is added to title 24 of the Code of Federal Regulations, to read as follows:

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO DESIGNATIONS

Subpart A—General Provisions

Sec.
598.1 Applicability and scope.
598.2 Objective and purpose.
598.3 Definitions.
598.4 Period of designation.

Subpart B—Eligibility Requirements

598.100 Eligibility requirements.
598.105 Data used for eligibility determinations.
598.110 Tests of pervasive poverty, unemployment and general distress.
598.115 Poverty rate.

Subpart C—Nomination Procedure

598.200 Who nominates an area for designation?
598.205 What are the requirements for nomination?
598.210 What certifications must governments make?
598.215 What are the purpose and content of the strategic plan?

Subpart D—Designation Process

598.300 Procedure for submitting a nomination.
598.305 Selection factors for designation of urban empowerment zones.

Subpart E—Post-Designation Requirements

598.400 HUD grants for planning activities.
598.405 Environmental review.
598.410 Public access to materials and proceedings.
598.415 Reporting.
598.420 Periodic progress determinations.
598.425 Validation of designation.
598.430 Revocation of designation.

Subpart F—Special Rules

598.500 Indian Reservations.
598.505 Governments.
598.510 Nominations by Economic Development Corporations or the District of Columbia.
598.515 Alaska and Hawaii.

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 598.1 Applicability and scope.

(a) This part establishes policies and procedures applicable to the second round of designations of urban Empowerment Zones, authorized under Subchapter U of the Internal Revenue Code of 1986 (26 U.S.C. 1391, *et seq.*), as amended by sections 952 and 954 of the Taxpayer Relief Act of 1997.

(b) This part contains provisions relating to area requirements, the nomination process for urban Empowerment Zones, and the designation and evaluation of these Zones by HUD. Provisions dealing with the nomination and designation of rural Empowerment Zones are issued by the Department of Agriculture.

§ 598.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones in urban areas, to stimulate the creation of new jobs—empowering low-income persons and families receiving public assistance to become economically self-sufficient—and to promote revitalization of economically distressed areas.

§ 598.3 Definitions.

In addition to the definitions of "HUD" and "Secretary" found in 24 CFR 5.100, the following definitions apply to this part.

Census tract means a census tract, as the term is used by the Bureau of the Census, or, if census tracts are not defined for the area, a block numbering area.

Designation means the process by which the Secretary designates urban areas as Empowerment Zones eligible for tax incentives and credits established by Subchapter U of the Internal Revenue Code of 1986, as amended (26 U.S.C. 1391, *et seq.*) and for special consideration for programs of Federal assistance.

Developable site means a parcel of land in a nominated area that may be developed for commercial or industrial purposes.

Empowerment Zone means an urban area so designated by the Secretary in accordance with this part.

EZ/EC SSBG funds means any funds that may be provided to States or Tribes by HHS in accordance with section 2007(a) of the Social Security Act (42 U.S.C. 1397f), for use by the designated Round II Empowerment Zone.

HHS means the U.S. Department of Health and Human Services.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and any combination of these political subdivisions that is recognized by the Secretary.

Nominated area means an area nominated by one or more local governments and the State or States in which it is located for designation in accordance with this part.

Revocation of designation means the process by which the Secretary may revoke the designation of an urban area as an Empowerment Zone . (See subpart E of this part.)

State means any State of the United States.

Urban area means:

(1) An area that lies inside a Metropolitan Statistical Area (MSA), as designated by the Office of Management and Budget; or

(2) An area outside an MSA if the jurisdiction of the nominating local government documents:

(i) The urban character of the area, or

(ii) The link between the area and the proposed area in the MSA.

§ 598.4 Period of designation.

The designation of an urban area as an Empowerment Zone will remain in full effect during the period beginning on the date of designation and ending on the earliest of:

(a) The close of the tenth calendar year beginning on the date of designation;

(b) The termination date designated by the State and local Governments in their application for nomination; or

(c) The date the Secretary modifies or revokes the designation.

Subpart B—Eligibility Requirements

§ 598.100 Eligibility requirements.

A nominated urban area is eligible for designation in accordance with this part only if the area:

(a) Has a maximum population that is the lesser of:

(1) 200,000; or

(2) The greater of 50,000 or ten percent of the population of the most populous city located within the nominated area;

(b) Is one of pervasive poverty, unemployment and general distress, as described in § 598.110;

(c) Does not exceed twenty square miles in total land area, excluding up to three noncontiguous developable sites that are exempt from the poverty criteria;

(d) Has a continuous boundary, or consists of not more than three non-contiguous parcels meeting the poverty criteria, and not more than three noncontiguous developable sites exempt under § 598.115(c)(1) from the poverty rate criteria;

(e) Is located entirely within the jurisdiction of the unit or units of general local government making the nomination, and is located in no more than two contiguous States; and

(f) Does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the poverty rate for each census tract in the district is not less than 35 percent.

§ 598.105 Data used for eligibility determinations.

(a) *Source of data.* The data to be used in determining the eligibility of an area is from the 1990 Decennial Census, and from information published by the Bureau of the Census and the Bureau of Labor Statistics. Specific information on

appropriate data to be submitted will be provided in the application.

(b) *Use of statistics on boundaries.* The boundary of an urban area nominated for designation as an Empowerment Zone must coincide with the boundaries of census tracts, as defined in § 598.3.

§ 598.110 Tests of pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Pervasive poverty is demonstrated by evidence that:

(1) Poverty, as indicated by the number of persons listed as being in poverty in the 1990 Decennial Census, is widespread throughout the nominated area; or

(2) Poverty, as described above, has become entrenched or intractable over time (through comparison of 1980 and 1990 census data or other relevant evidence).

(b) *Unemployment.* Unemployment is demonstrated by:

(1) The most recent data available indicating that the annual rate of unemployment for the nominated area is not less than the national annual average rate of unemployment; or

(2) Evidence of especially severe economic conditions, such as military base or plant closings or other conditions that have brought about significant job dislocation within the nominated area.

(c) *General distress.* General distress is evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, number of persons on welfare, per capita property tax base, average years of school completed, substantial population decline, and a high or rising incidence of crime, narcotics use, homelessness, high incidence of AIDS, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidence of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress.

§ 598.115 Poverty rate.

(a) *General.* In order to be eligible for designation, an area's poverty rate must satisfy the following criteria:

(1) In each census tract within a nominated urban area, the poverty rate must be not less than 20 percent; and

(2) For at least 90 percent of the census tracts within the nominated urban area, the poverty rate must be not less than 25 percent.

(b) *Special rules relating to the determination of poverty rate*—(1) *Census tracts with populations of less than 2,000.* A census tract that has a population of less than 2,000 is treated as having a poverty rate that meets the requirements of paragraphs (a)(1) and (a)(2) of this section if more than 75 percent of the tract is zoned for commercial or industrial use, and the tract is contiguous to one or more other census tracts that have an actual poverty rate of not less than 25 percent.

(2) *Rounding up of percentages.* In making the calculations required by this section, the Secretary will round all fractional percentages of one-half percent or more up to the next highest whole percentage figure.

(c) *Noncontiguous parcels.* (1) Noncontiguous parcels that are developable sites are exempt from the poverty rate criteria of paragraph (a) of this section, for up to three developable sites.

(2) The total area of the noncontiguous parcels that are developable sites exempt from the poverty rate criteria of paragraph (a) of this section must not exceed 2,000 acres.

(3) A nominated urban area must not contain a noncontiguous parcel unless such parcel separately meets the criteria set forth at paragraphs (a)(1) and (2) of this section, except for up to three developable sites.

(4) There must not be more than three noncontiguous parcels, except that up to three developable sites are not included in this limit.

Subpart C—Nomination Procedure

§ 598.200 Who nominates an area for designation?

Applicants for empowerment zone designation must be nominated by the State or States and one or more local government(s) in which the area is located, except as provided in §§ 598.500, 598.510, and 598.515. The nomination must be submitted in a form to be prescribed by HUD in the application and in the document announcing the initiation of the designation process, and must contain complete and accurate information.

§ 598.205 What are the requirements for nomination?

(a) *General.* No urban area may be considered for designation in accordance with subpart D of this part unless:

(1) The urban area is within the jurisdiction of a State or States and local government(s) that have the authority to nominate the urban area for designation and that provide written assurances satisfactory to the Secretary that the strategic plan described in § 598.215 will be implemented, and these governments submit its nomination;

(2) All information furnished by the nominating State(s) and local government(s) is determined by the Secretary to be reasonably accurate; and

(3) The application for designation is complete, as described in paragraph (b) of this section.

(b) *Contents of application for designation.* The application for designation of an urban area as an Empowerment Zone must do the following:

(1) Demonstrate that the nominated urban area satisfies the eligibility criteria set forth in subpart B of this part;

(2) Include a strategic plan, as described in § 598.215;

(3) Include the certifications described in § 598.210;

(4) Include the 1990 census maps showing the following:

(i) The boundaries of the local government(s): and

(ii) The boundaries of the nominated area, including any developable sites; and

(5) Include such other information as may be required by HUD in the application or in the document announcing the initiation of the designation process.

§ 598.210 What certifications must governments make?

Certifications must be submitted by the State(s) and local government(s) requesting designation stating that:

(a) The nominated urban area satisfies the boundary tests of § 598.100(d);

(b) The nominated urban area is one of pervasive poverty, unemployment and general distress, as prescribed by § 598.110;

(c) The nominated urban area contains no portion of an area that is included in an Empowerment Zone or any other area currently nominated for designation as an Empowerment Zone (but it may include an Enterprise Community);

(d) Each nominating governmental entity has the authority to:

(1) Nominate the urban area for designation as an Empowerment Zone;

(2) Make the commitments required of nominating entities by § 598.215(b); and

(3) Provide written assurances satisfactory to the Secretary that the strategic plan will be implemented.

(e) Provide assurances that any Round II EZ/EC SSBG funds that may be provided to the State for the area will not be used to supplant Federal or non-Federal funds for services and activities that promote the purposes of section 2007 of the Social Security Act;

(f) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan and reporting on the use of EZ/EC SSBG funds; and

(g) Provide assurances that the nominating State(s) agrees to distribute any EZ/EC SSBG funds that may be awarded to it for use by a designated Empowerment Zone for programs, services, and activities included in the Empowerment Zone's strategic plan to the extent they are consistent with section 2007(a) of the Social Security Act as well as other applicable Federal, State, and local laws and regulations.

(h) Provide assurances that the nominating governments will administer the Empowerment Zone program in a manner which affirmatively furthers fair housing on the bases of race, color, national origin, religion, sex, disability, and familial status (presence of children).

§ 598.215 What are the purpose and content of the strategic plan?

(a) *Principles of strategic plan.* The strategic plan, which accompanies the application for designation, must be developed in accordance with four key principles:

(1) Strategic Vision for Change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It also should set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan;

(2) Community-Based Partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens;

(3) Economic Opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important job readiness and job support services, such as affordable child care and transportation services, that may enable residents to be employed in jobs that offer upward mobility;

(4) Sustainable Community Development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community and human development. These approaches should preserve the environment and historic landmarks, address "brownfields" clean-up and redevelopment, explore the economic development advantages of energy efficiency and use of renewable energy resources, and improve transportation, education, public safety, and enhanced access to information and technology among all segments of the community.

(b) *Elements of strategic plan.* The strategic plan must include the following elements:

(1) *Vision and values:* The community's strategic vision for change—a statement of what the community believes its future should be, and a statement of the community's values that guided the creation of the vision. Explain how the vision creates economic opportunity, encourages self-sufficiency and promotes sustainable community development.

(2) *Community assessment:* A comprehensive assessment of existing conditions and trends within the community, which includes, as a minimum:

(i) *Assessment of problems and opportunities.* A description and assessment of the trends and conditions within the community and of the surrounding region that form the basis of the strategic plan. The assessment will include an analysis of the strengths and assets of the community and region, as well as needs and problems, and should include a description of poverty and general distress, barriers to economic development and barriers to human development; and

(ii) *Resource analysis.* An assessment of the resources available to the community, including potential resources outside the nominated area, to address identified problems and needs, and maximize opportunities that exist within the community. Such resources may include financial, technical, human, cultural, educational, leadership, volunteerism, communications, transportation and commerce centers, rail and mass transit linkages, redevelopable land (including land, such as ports, that can be designated as "developable sites" under the additional 2,000 acres available), public space, infrastructure, and other community and regional assets that form the basis for the formulation and implementation of the strategic plan.

(3) *Goals:* A statement of a comprehensive and holistic set of goals to be achieved through implementation of the strategic plan throughout the 10-year implementation period, and a statement of the strategies the community proposes to use to achieve the strategic plan goals, and the identification of priority objectives.

(4) *Implementation plan:* A detailed plan that outlines how the community will implement its strategic plan. The plan will include:

(i) *Projects and programs.* Provide, for the first two-year implementation period, the following:

(A) A narrative outlining the specific projects and programs that will be implemented that will result in the achievement of the community's goals;

(B) Proposed timelines for implementing identified projects and programs;

(C) Identification of lead implementers of identified projects and programs, along with innovative partnerships that will be utilized to insure maximum community participation and project sustainability;

(D) Proposed budgets for each identified project or program, including projected costs, and sources of funding. Information on sources of funding will include whether the funding is anticipated or committed, and whether funding is conditioned upon the designation of the community as an Empowerment Zone. Evidence of committed funding is required, and may include letters of commitment, resolutions of support, or similar documentation as outlined in paragraph (b)(6) of this section. Funding may include cash and in-kind support from Federal, State and local governments, non-profit organizations, foundations, private businesses and other entities that will assist in the implementation of the strategic plan. Budgets will also include details about proposed uses of any Round II EZ/EC SSBG funds that may become available from HHS, in accordance with Guidelines on Eligible Uses of EZ/EC SSBG Funds.[1]

(E) Baselines and proposed measurable outputs;

(ii) *Tax incentive utilization plan.* A plan for integrating the new business tax incentives that are available to designated Empowerment Zones into the nominated area's business development efforts. The Round II tax

[1] The Guidelines were published as an appendix to the interim rule on Empowerment Zones: Second Round Designation, published in the **Federal Register** on April 16, 1998.

incentives include Tax-Exempt Bond Financing, Increased Section 179 Deduction, Welfare-to-Work Credit, Environmental Cleanup Cost Deduction (i.e., "Brownfields Tax Incentive"), and the Work Opportunity Tax Credit. For a description of the tax incentives, see IRS Publication 954, "Tax Incentives for Empowerment Zones and Other Distressed Communities";

(iii) *Developable sites plan.* If the nominated area is to include developable sites, a plan to describe how the use of these parcels would benefit residents and businesses of the nominated area;

(iv) *Governance plan.* A Governance Plan for the administration of the strategic plan implementation process, which will include the following:

(A) The name of the proposed lead implementing entity, and other major administrative entities and their proposed or actual legal status and authority to receive and administer Federal funds. The strategic plan may be implemented by the local governments(s) and/or by the State(s) nominating an urban area for designation and/or by nongovernmental entities identified in the strategic plan;

(B) Evidence that the lead implementing entity and other key entities participating in the strategic plan implementation have the capacity to implement the plan;

(C) Proposed composition and date of establishment of any governance boards, advisory boards, commissions or similar bodies that will be established to manage the implementation of the strategic plan. Specific information will be included regarding representation of residents and businesses of the proposed Empowerment Zone area, and how members of the boards or commissions will be selected;

(D) The relationship between any governance structure created and local governments and other major community or regional organizations, such as a metropolitan planning organization, operating in the same geographic area;

(E) The methods by which stakeholders within the Zone will be kept informed about Zone activities and progress in implementing the strategic plan, including a description of plans for meetings open to the public. The community should utilize modern communication techniques and incorporate the Internet in order to enhance the communication and access to information among all stakeholders and participants; and

(F) The methods and procedures that will ensure continuing community and grassroots participation in the implementation of the strategic plan and in the governance of the Zone's activities.

(v) *Community performance assessment.* Methods the community will use to assess its own performance in implementing the strategic plan, and the process it will use to continually review the plan and amend as appropriate.

(5) *Strategic planning process documentation:* A description of the process the community used to select the boundaries of the proposed Empowerment Zone, including the developable sites, and to prepare the Strategic Plan. The documentation will:

(i) Explain how the community participated in choosing the area that is being nominated and why the area was nominated;

(ii) Indicate and briefly describe the specific groups, organizations, and individuals participating in the production of the plan and describe the history of these groups in the community;

(iii) Explain how participants were selected and provide evidence that the participants, taken as a whole, broadly represent the racial, cultural, gender, and economic diversity of the community;

(iv) Describe the role of the participants in the creation, development and future implementation of the plan; and

(v) Identify two or three topics addressed in the plan that caused the most serious disagreements among participants and describe how those disagreements were resolved; and

(6) *Documentation of commitments:* Letters of commitment, resolutions committing public or private resources, and other documentation that will demonstrate the level of public and private resources, both inside and outside the nominated area, that will be available to implement the Strategic Plan and increase economic opportunity in the nominated Empowerment Zone.

(c) *Prohibition against business relocation.* The strategic plan may not include any action to assist any establishment in relocating from one area outside the nominated urban area to the nominated urban area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(1) The establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(2) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

Subpart D—Designation Process

§ 598.300 Procedure for submitting a nomination.

(a) *Establishment of submission procedures.* HUD will establish a time period and procedures for the submission of nominations for designation as Empowerment Zones, including submission deadlines and addresses, in a document announcing the initiation of the designation process.

(b) *Acceptance for processing.* HUD will accept for processing those nominations for designation as Empowerment Zones that HUD determines have met the criteria required by this part.

(c) *Publication of designations.* Announcements of those nominated urban areas designated as Empowerment Zones will be made by publication in the **Federal Register**.

§ 598.305 Designation factors.

In choosing among nominated urban areas eligible for designation, the Secretary will consider:

(a) *Quality of strategic plan.* The quality of the strategic plan (see § 598.215(b));

(b) *Quality of commitments.* The quality and breadth of the commitments made in connection with the strategic plan (see § 598.215(b)); and

(c) *Other factors.* Other factors established by HUD, as specified in a **Federal Register** notice.

Subpart E—Post-Designation Requirements

§ 598.400 HUD grants for planning activities.

(a) HUD will award planning grants up to $100,000 to each of the Empowerment Zones designated in accordance with this part.

(b) Eligible recipients for these grants are the lead unit of general local government that received designation under this part, or its designee. These recipients may subgrant all or part of the planning grant to qualified subgrantees, such as community organizations, agencies of local government, regional planning authorities, or planning consultants.

(c) Eligible planning activities include: hiring and development of staff, consulting services, publication of materials, community outreach and participation, governing board training, and similar activities that are intended to:

(1) Expand the planning capacity of the designee local government, the governing board, and/or participating entities, such as community organizations;

(2) Help the designee plan the implementation of the strategic plan; and

(3) Help the designee to develop its performance measurement process.

(d) The document announcing the initiation of the designation process describes the procedures for award of these planning grants, post-award reporting requirements with respect to the grants, and the uniform requirements applicable to all Federal grants.

§ 598.405 Environmental review.

Where an empowerment zone's strategic plan or any revision thereof proposes the use of EZ/EC SSBG funds for activities that are not excluded from environmental review under 24 CFR 50.19(b), an environmental review will be performed as required by applicable law.

§ 598.410 Public access to materials and proceedings.

After designation, an area designated an EZ must make available to the public copies of the strategic plan and supporting documentation and must conduct its meetings in accordance with applicable open meetings statutes. HUD may make the strategic plan and supporting documentation available to members of the public.

§ 598.415 Reporting.

(a) Empowerment Zones designated in accordance with this part must submit periodic reports to HUD. These reports must identify the community, local government and State actions that have been taken in accordance with the strategic plan and provide notice of updates and modifications to the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones as HUD requests from time to time, including information documenting nondiscrimination in hiring and employment by businesses within the designated Empowerment Zone, must be submitted promptly.

(b) The States must submit periodic reports to HUD, demonstrating compliance with the certifications it is required to submit in accordance with this part.

§ 598.420 Periodic progress determinations.

HUD will regularly evaluate the progress of implementation of the strategic plan in each designated Empowerment Zone on the basis of available information. HUD also may commission evaluations of the Empowerment Zone program as a whole by an impartial third party, at such intervals as HUD may establish.

§ 598.425 Validation of designation.

(a) On the basis of the periodic progress determinations described in § 598.420, and subject to the provisions relating to the revocation of designation in § 598.430, HUD will make findings on the continuing eligibility for and the validity of the designation of any Empowerment Zone.

(b) HUD may approve an Empowerment Zone's request for boundary modification, subject to the requirements specified in subpart B of this part.

§ 598.430 Revocation of designation.

(a) *Basis for revocation.* The Secretary may revoke the designation of an urban area as an Empowerment Zone if the Secretary determines, on the basis of the periodic progress determination described at § 598.420, that the State(s) or local government(s) in which the urban area is located:

(1) Has modified the boundaries of the area without written approval from HUD;

(2) Has failed to make progress in implementing the strategic plan; or

(3) Has not complied substantially with the strategic plan.

(b) *Letter of warning.* Before revoking the designation of an urban area and an Empowerment Zone, the Secretary will issue a letter of warning to the nominating State(s) and local government(s), with a copy to all affected Federal agencies of which the Secretary is aware;

(1) Advising that the Secretary has determined that the nominating local government(s) and/or State(s) has:

(i) Modified the boundaries of the area without written approval from HUD; or

(ii) Is not complying substantially with, or has failed to make progress in implementing the strategic plan; and

(2) Requesting a reply from the nominating entities within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, the Secretary must issue a final notice of revocation of the designation of the urban area as an Empowerment Zone, after allowing 90 days from the date of receipt of the letter of warning for response, and after making a determination in accordance with paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* HUD will notify all affected Federal agencies of which it is aware, of its determination to revoke any designation in accordance with this section.

(e) *Effect of revocation.* Upon revocation of an EZ's designation, the designation and remaining benefits may be awarded to the next highest ranked Round II applicant.

(f) *Publication.* The final notice of revocation of designation will be published in the **Federal Register**, and the revocation will be effective on the date of publication.

Subpart F—Special Rules

§ 598.500 Indian reservations.

(a) An area within an Indian reservation (as defined in section 168(j)(6) if the Internal Revenue Code, 26 U.S.C. 168(j)(6)) may be included in an area nominated as an Empowerment Zone by State and local governments. An area completely within an Indian reservation may be nominated by the reservation governing body and, in that case, the area is treated as if it also were nominated by a State and a local government. Where two (or more) governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

(b) For purposes of paragraph (a) of this section, a reservation governing body must be the governing body of an Indian entity recognized and eligible to receive services from the Bureau of Indian Affairs, United States Department of Interior.

§ 598.505 Governments.

If more than one State or local government seeks to nominate an urban area under this part, any reference to or requirement of this part applies to all such governments.

§ 598.510 Nominations by economic development corporations or the District of Columbia.

Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and local government.

§ 598.515 Alaska and Hawaii.

A nominated area in Alaska or Hawaii is deemed to satisfy the criteria of distress, size, and poverty rate detailed

in § 598.100(b), (c), (d), and (f), and § 598.110 if, for each census tract or block numbering area within the area, 20 percent or more of the families have income that is 50 percent or less of the statewide median family income (as determined under section 143 of the Internal Revenue Code).

Dated: March 27, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

Appendix—Guidelines on Eligible Uses of EZ/EC SSBG Funds

(1) *Background*

This appendix includes general guidance about allowed uses of any Round II EZ/EC SSBG funds that may be made available for Round II Empowerment Zones (EZs). It is based on the assumption that any Round II EZ/EC SSBG funding will be subject to the same statutory restrictions as the Round I EZ/EC SSBG grants. The U.S. Department of Health and Human Services (HHS) will issue further guidance regarding any Round II EZ/EC SSBG funds soon after it is authorized to award the funds.

(2) *Awards to States*

(a) HHS will award Round II EZ/EC SSBG grants to each State that nominated a designated Round II EZ. HHS will award the funds for each Round II EZ to the State agency that typically receives Social Services Block Grants, unless the EZ Lead Entity and its State request HHS to award them to a different agency.

(b) The HHS Terms and Conditions of the Round II EZ/EC SSBG grants will direct the recipient State agency to provide the funds to the appropriate Round II EZ Lead Entity(ies) for activities specified in the EZ's strategic plan and benchmarks/implementation plan. It is expected that the EZs will revise their plans and benchmarks from time to time.

(3) *Allowed Uses of Round II EZ/EC SSBG Funds*

(a) The Round II EZs may use Round II EZ/EC SSBG funds for a wide variety of programs, services and activities directed at revitalizing distressed communities and promoting economic independence for residents. Allowed programs, services and activities include, but are not limited to:

- Community and economic development programs and efforts to create employment opportunities;
- Job training and job readiness projects;
- Health programs such as public health education, primary health care, emergency medical services, alcohol and substance abuse prevention and treatment programs, and mental health services;
- Human development services such as child, youth and family development programs, services for the elderly, and child care services;
- Education projects such as after-school activities, adult learning classes, and school-to-work projects;
- Transportation services;
- Environmental clean up programs;
- Policing and criminal justice projects such as community policing efforts and youth gang prevention programs;
- Housing programs;
- Projects providing training and technical assistance to the EZ Lead Entity, its board and committee members, and other organizations; and
- Projects to finance community-focused financial institutions for enhancing the availability of credit such as loan funds, revolving loan funds, and micro-enterprise loan funds as well as other activities for easing financial barriers faced by social services entities, housing organizations and other organizations serving EZ residents.

(b) Round II EZs may use the Round II EZ/EC SSBG funds for projects supported in part with other Federal, State, local or private funds, and they may allocate a portion of the funds to the State grantee agency for its administrative and grant oversight costs. Round II EZs may not use the funds as the source of local matching funds required for other Federal grants.

(c) Round II EZs must ensure that each proposed use of Round II EZ/EC SSBG funds is: Directed at one or more of the EZ/EC SSBG statutory goals; included in the strategic plan; structured to benefit EZ residents; and in compliance with all applicable Federal, State and local laws and regulations.

(d) The statutory goals for uses of EZ/EC SSBG funds are as follows:

(1) Achieving and maintaining economic self-support for residents, to help them develop and retain the ability to support themselves and their families economically;

(2) Achieving and maintaining self-sufficiency for residents, to enable them to become and remain able to care for themselves in daily activities and in the long-term; and

(3) Preventing Neglect and Abuse and Preserving Families, to protect children and adults, who are unable to protect themselves from neglect, abuse or exploitation, and to preserve, rehabilitate or reunite families living in the designated neighborhoods.

(e) All programs, services and activities financed in whole or in part with Round II EZ/EC SSBG funds must be included in the strategic plan and benchmarks/implementation plans. Each project description must indicate the EZ/EC SSBG statutory goal it is attempting to achieve and how it will benefit EZ residents.

(f) All programs, services and activities financed in whole or in part with Round II EZ/EC SSBG funds must be structured to primarily benefit EZ residents; the programs, services and activities may also benefit nonresidents.

(g) To the extent consistent with the local strategic vision, localities may use Round II EZ/EC SSBG funds to finance programs, services and activities for addressing any of the following broad statute-based "program options." EZs that use the funds for any of the program options will have more flexibility in uses of funds. (See section (h) below). The EZs are not required to use the funds for the program options, and may use Round II EZ/EC SSBG funds to finance programs, services and activities addressing other issues. The program options are as follows:

(1) To provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for residents, particularly for pregnant women and mothers and their children;

(2) To support: (A) Training and employment opportunities for disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) Nonprofit organizations such as community and junior colleges providing short-term training courses for disadvantaged adults and youths about entrepreneurism and self-employment, and other types of training that will promote individual self-sufficiency and the interests of the community.

(3) To support projects designed to promote and protect the interests of children and families outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) To support:

(A) Services designed to promote community and economic development and job support services such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) Emergency and transitional housing and shelters for families and individuals; or

(C) Programs that promote home ownership, education, and other routes to economic independence for families and individuals.

(h) To the extent a program, service or activity in the strategic plan and benchmark/implementation plan document is a statutory program option listed in section (g) above, the EZ may use the Round II EZ/EC SSBG funds to implement that activity including to:

(1) Purchase or improve land or facilities;

(2) Make cash payments to individuals for subsistence or room and board;

(3) Make wage payments to individuals as a social service;

(4) Make cash payments for medical care; and

(5) Provide social services to institutionalized persons.

(i) To the extent a program, service or activity in the strategic plan and benchmark/implementation plan document is *not* a statutory program option listed in section (g) above, the EZ may use Round II EZ/EC SSBG funds for the following purposes as a component of that activity only after receiving approval from the U.S. Department of Health and Human Services :

(1) Purchase or improve land or facilities;

(2) Make cash payments to individuals for subsistence or room and board;

(3) Make wage payments to individuals as a social service;

(4) Make cash payments for medical care; or

(5) Provide social services to institutionalized persons.

(j) To the extent a program, service or activity in the strategic plan and benchmark/implementation plan document is not one of

the program options listed in section (g) above, the plan must include a statement explaining why the locality chose that project.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4353–N–01]

Notice Inviting Applications: Second Round Designation of Fifteen Urban Empowerment Zones

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice inviting applications.

SUMMARY: The Taxpayer Relief Act of 1997 authorizes the Secretary to designate 15 Round II Urban Empowerment Zones. This Notice invites applications for designation of nominated areas as Empowerment Zones. The designation of the new Empowerment Zones will be made in accordance with the designation process described in this Notice. The new Urban Empowerment Zones will receive between $130 million and $230 million in tax-exempt bond authority to create economic opportunity for area residents and businesses.

APPLICATION DUE DATE: Completed applications (one original and 2 copies) must be submitted no later than October 9, 1998. See below for specific procedures governing the form of application submission (e.g., mailed application, express mail, overnight delivery). No facsimile (FAX) applications will be accepted for consideration by HUD.

Delivered Applications. Completed applications (one original and two copies) must be submitted no later than 5:00 p.m. eastern time, on October 9, 1998. Up until 5:00 p.m. on the deadline date, completed applications will be accepted at the address and room number specified below.

Mailed Applications. Applications will be considered timely if postmarked on or before October 9, 1998 and received by HUD Headquarters on or before October 19, 1998, at the address and room number specified below.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered filed on time if received on or before October 9, 1998, or, as long as the application review process has not been completed, upon submission of documentary evidence acceptable to HUD, in its sole discretion, that they were placed in transit with the overnight delivery service on or before October 8, 1998.

ADDRESSES: *Address for submitting applications.* Completed applications (one original and two copies) should be submitted to: the Office of Community Planning and Development, c/o Processing and Control Unit, Room 7255, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, by mail or hand delivery.

For Application and Other Materials. For a copy of all EZ Round II publications, including the Application Guide, Nomination Forms, the interim rule (24 CFR part 598, published elsewhere in this issue of the **Federal Register**), and the "Guidelines for Use of EZ/EC SSBG Funds" (which is also provided as an appendix to the interim rule), please call the Community Connections Information Clearinghouse at (800) 998–9999. The Round II publications are also available on the HUD web site: http://www.hud.gov/ezeclist.html. Requests for application materials should be made immediately to insure sufficient time for application preparation. Hearing- or speech-impaired persons should use the Federal Information Relay Service telephone number, (800) 877–8339, to obtain application materials.

The Round II publications consist of:

—Round II Interim Rule;

—Application Guide for Empowerment Zones Round II (Application Guide);

—Nomination Forms for a Federal Empowerment Zone (Nomination Forms) (form HUD 40003);

—Strategic Planning Guide;

—Performance Measurement System Guide;

—Federal Programs Guide;

—IRS Publication 954, "Tax Incentives for Empowerment Zones and Other Distressed Communities."

A series of application workshops will be held in several locations around the country during the months of April and May. Information about the workshops will be disseminated in several ways, including the HUD web site, by facsimile, by mail, and by calling the Community Connections Information Clearinghouse at (800) 998–9999.

FOR FURTHER INFORMATION: For technical questions, contact Elaine Braverman, Empowerment Zone/Enterprise Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7130, Washington, DC 20410, (202) 708–6339. Hearing- or speech-impaired individuals may call (800) 877–8339 (the Federal Information Relay Service-TTY).

SUPPLEMENTARY INFORMATION:

I. Summary

A. Purpose and Authority

The Taxpayer Relief Act of 1997 (the Act) authorizes the Secretary to designate 15 new Urban Empowerment Zones. The new Urban Empowerment Zones will receive between $130 million and $230 million in tax-exempt bond authority to create economic opportunity for area residents and businesses. The Act makes several changes with respect to satisfying poverty rate criteria. It permits Zones to identify noncontiguous parcels that are "developable sites" that can be used for commercial and industrial purposes, which need not satisfy the poverty rate and size criteria applicable to other noncontiguous sites; eliminates the requirement that some of the tracts have at least 35 percent poverty; and makes it slightly more difficult for census tracts with small populations to meet the poverty criteria. Alaska and Hawaii are now eligible for Empowerment Zone designation and the Act permits Indian reservations to be included in an area nominated as an Urban or Rural Empowerment Zone.

B. Available Resources

The tax benefits that apply to the Round II EZs are the following: tax-exempt bond financing, welfare-to-work tax credit, work opportunity tax credit, environmental cleanup cost deduction ("brownfields" tax incentive), and up to $20,000 of additional section 179 (accelerated depreciation) expensing. The first round of Empowerment Zone and Enterprise Community designations made in 1994 featured grants from the U.S. Department of Health and Human Services to States for the designated Empowerment Zones and Enterprise Communities. While similar grant funds have not been authorized for the Round II EZs, HUD anticipates that funding may become available for Round II Urban Empowerment Zones in Fiscal Year 1999. Should EZ/EC SSBG funds become available before the application deadline of October 9, 1998, the Department will issue a notice of the amount of such funds available to each zone. (Note: If the EZ/EC SSBG funds are made available, an environmental review for all activities proposed to be funded with EZ/EC SSBG funds and are not excluded under 24 CFR 50.19(b) will be performed, as required by applicable law.)

C. Uses of Funds

General guidelines concerning uses of EZ/EC SSBG funds are included in the Appendix to the Interim rule published elsewhere in this issue of the **Federal**

Register and on the Internet at the following address: http://aspe.os.dhhs.gov/progsys/HHSguide.htm. Applicants are encouraged to review the guidelines and ensure that all proposed projects to be financed with the anticipated grant funds conform to them.

II. Application Preparation

A. Notice of Intent to Participate

Applicants should submit a Notice of Intent to Participate form as early as possible. The Notice should be submitted on the form provided in the Nomination Forms publication. Submission of the Notice of Intent to Participate is not mandatory, but it will ensure that an applicant receives updated information. The Notice of Intent to Participate may be mailed, or submitted by facsimile (FAX). The address for submitting the Notice of Intent to Participate is: U.S. Department of Housing and Urban Development, Ms. Elaine Braverman, EZ/EC Team, Room 7130, 451 Seventh St., SW, Washington, DC. 20410. The facsimile number is (202) 401–7615.

B. Application Requirements

1. The application must include an original and two copies of the items listed below. To facilitate review, please submit applications in such a form that they can be taken apart. Loose leaf binders are preferable.

2. The application submitted on behalf of a nominated urban area shall include:

a. Nomination Form Parts I through IV, including the required certifications and written assurances;

b. A strategic plan which meets the requirements of the Interim rule, including the content specified in § 598.215 of the rule; and

c. 1990 census maps showing:

(i) The boundaries of the local government(s); and

(ii) The boundaries of the nominated area, including developable sites, if any.

3. Preferably, the Strategic Plan will contain no more than 150 pages.

4. The application should contain only the necessary documentation. Appendices or additional information extraneous to evaluation components will not be reviewed. Examples of such extraneous information include: meeting sign-in sheets, and copies of applications for other funds.

C. Strategic Plan Requirements

The Strategic Plan shall conform to the requirements set forth in § 598.215 of the Interim rule, and the criteria stated in this Notice. Requirements set forth in the interim rule will be used in the evaluation process.

III. Designation Process

A. General

HUD will accept for processing those nominations meeting the submission deadline stated in this Notice, and the Eligibility Requirements listed in Subpart B of the Interim Rule. Nominating procedures are described in Subpart C of the Interim rule.

B. Exceptions

The Secretary may waive a non-statutory provision of the Interim Rule for good cause where it is determined that the application of the provision would result in undue hardship to the applicant.

C. Application Review

A threshold review will be conducted to ensure the application requirements in Section II(B) of this Notice are satisfied, and the applicant meets the eligibility requirements listed below. Applications determined eligible will receive a technical review under the rating factors described in Section IV of this Notice. Specific maximum point scores for each rating factor are listed in Section IV. Applications will be evaluated against the rating factors, then placed in rank order. Evaluation and ranking of applications will be made relative to other applications received.

To review and rate applications, the Department may establish panels including employees of other Federal agencies to obtain certain expertise and outside points of view.

1. Eligibility Requirements

a. To be considered for designation, a nominated urban area, with the exception of areas described below in the Special Rules, must meet all of the eligibility requirements of § 598.100.

The only sources of census data that will be used in determining the eligibility of an area are: the 1990 Decennial Census, and information published by the Bureau of Census and the Bureau of Labor Statistics. The boundary of an urban area nominated for designation as an Empowerment Zone must coincide with the boundaries of census tracts. Census tract means a census tract as the term is used by the Bureau of the Census, or, if and only if census tracts are not defined for the area, a block numbering area.

b. A nominated urban area, with the exception of areas described below in the Special Rules, must demonstrate poverty, unemployment and general distress, as described in § 598.110. In addition, each nominated area must satisfy the specific poverty rate criteria in § 598.115.

c. *Special Rules.*

(i) A nominated area in Alaska or Hawaii is deemed to satisfy the criteria of distress, size, and poverty rate detailed in § 598.100(b), (c), (d), and (f), and § 598.110 if, for each census tract or block numbering area within the nominated area, 20 percent or more of the families have income that is 50 percent or less of the statewide median family income (as determined under section 143 of the Internal Revenue Code).

(ii) An area within an Indian reservation (as defined in section 168(j)(6) of the Internal Revenue Code) may be included in an area nominated as an Empowerment Zone by State and local governments. An area completely within an Indian reservation may be nominated by the reservation governing body, and in that case, the area is treated as if it also were nominated by a State and a local government. Where two or more governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

(iii) Any urban area nominated by an Economic Development Corporation chartered by the State in which it is located or by the District of Columbia shall be treated as nominated by a State and a local government.

2. Technical Review

a. *General.* The technical review will evaluate the quality of the application against the following rating factors:

(i) Quality of the Strategic Plan; and

(ii) Quality of the Commitments made in connection with the Strategic Plan.

The criteria against which HUD will measure these factors, and the maximum points that will be awarded for each factor are described below in Section IV. An application may receive up to 100 total points.

b. *Corrections to Deficient Applications.* HUD will notify an applicant in writing, or by FAX, of any technical deficiencies in the application, and HUD will maintain a log of such communications.

The notification will specify the date by which HUD must receive the applicant's correction of all technical deficiencies, which shall be within 14 calendar days from the date of HUD's notification. If the fourteenth day falls on a Saturday, Sunday, or holiday, the correction must be received by HUD on the next business day. The date and time of receipt of corrections by HUD shall be determined in the same way as the receipt of the application.

Technical deficiencies relate to items that:

(i) Are not necessary for HUD review under the rating factors; and

(ii) Would not improve the substantive quality of the proposal. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official.

If any of the items identified in HUD's written notification of technical deficiencies are not corrected and submitted within the correction period, the application will be ineligible for further consideration.

c. *Clarification of Application and Request for Additional Information.* The Department may contact an applicant to obtain clarification of the terms of an applicant's application. Clarification may include, for example, a request for information to ensure HUD understanding of the terms of an applicant's application. In obtaining clarifying information, the Department may contact an applicant telephonically or in person. The Department will conduct all requests for clarification from an applicant according to uniform procedures and will document all requests.

In addition, the Department reserves the right to conduct independent site inspections of proposed EZ/EC sites to accurately rate and rank an applicant's application under the selection criteria provided in this Notice. Should HUD decide to conduct site visits, it will visit sites according to uniform procedures. The Department will document site visit findings.

HUD employees involved in the review of applications and the making of designation decisions will refrain from providing advance information to any person (other than an authorized employee of HUD) concerning designation decisions, or from otherwise giving any applicant an unfair competitive advantage.

D. Designation Announcements

Designations will be made before January 1, 1999. The nominated urban areas designated as Empowerment Zones will be published in the **Federal Register.**

IV. Designation Factors

In choosing among nominated areas eligible for designation, HUD will consider the following factors:

- Quality of the Strategic Plan; and
- Quality of the Commitments made in connection with the Strategic Plan.

The following chart identifies the points that will be assigned to each rating factor. The criteria HUD will use to rate the applications on the factors follow the chart.

Rating factors	Maximum points
Quality of Strategic Plan (75 points):	
1. Vision/Values	5
2. Community Assessment	10
3. Goals	10
4. Implementation Plan	35
a. Projects/Programs	(15)
b. Tax Incentive Utilization Plan	(10)
c. Governance Plan	(7)
d. Community Performance Assessment	(3)
5. Strategic Planning Process Documentation	15
Quality of Strategic Plan Subtotal	75
Quality of Commitments Made in Connection With Strategic Plan (25):	
1. Resources Leveraged	10
2. Resource Commitments Documented	15
Quality of Commitments Subtotal	25
Total Points	100

A. Quality of the Strategic Plan (Maximum Points: 75)

The strategic plan must be developed in accordance with four key principles, described in § 598.215: strategic vision for change, community-based partnerships, economic opportunity, and sustainable community development. The elements required in the strategic plan reflect the key principles. Innovation and creativity are encouraged in fulfilling all elements of the plan.

1. Vision and Values (Maximum Points: 5)

This element is a consensus of what the community believes its future should be. The shared vision of the future should drive the development of the community's goals. The shared values that guided the creation of the vision should also be described. HUD will consider the extent to which this element:

a. States a clear vision for the future;

b. Develops the foundation upon which the goals are established and specific projects and programs are based;

c. Demonstrates collaboration of the community's diverse stakeholders in arriving at its vision and values statement;

d. Provides an effective vision for the community's long-term transformation; and

e. Exhibits innovation and creativity.

2. Community Assessment (Maximum Points: 10)

This element describes and assesses the existing conditions and trends in the community and the surrounding region. It examines strengths and assets, as well as issues and problems. In evaluating this element, HUD will consider the extent to which:

a. The analysis of the strengths and opportunities of the area is balanced against the area's needs and problems;

b. A variety of resources have been identified to address the needs and problems;

c. The assessment demonstrates a grasp of the trends that will affect the community and the surrounding region over the period of the designation; and

d. The analysis includes the identification of developable sites, as appropriate, and an assessment of the opportunities available within these developable sites.

3. Goals (Maximum Points: 10)

This element describes the comprehensive set of goals to be achieved over the 10-year program period, along with the strategies that will be used. In evaluating this element, HUD will consider the extent to which:

a. The goals serve as the framework for specific strategies;

b. The strategies proposed to achieve the strategic plan goals have been effectively described, and demonstrate the link between the goals and proposed projects and programs; and

c. The goals are designed to move the community toward its desired future.

4. Implementation Plan (Maximum Points: 35)

This element contains a detailed plan of how the community will implement its strategic plan. The components of the Implementation Plan are: Projects and Programs, Tax Incentive Utilization Plan, and a Governance Plan. These components must provide detailed information for the first 2 years of designation. However, applicants also must provide a general description of all activities that are proposed for the 10-year designation period and a description of how all EZ/EC SSBG funds, if available, will be used.

a. *Projects and Programs (maximum points: 15).* This element describes the specific projects and programs to be implemented during the first two years of the designation. Timelines and budgets must be provided for the 2-year plan. HUD will evaluate this component considering the extent to which:

(i) The narrative clearly outlines the specific projects and programs that will be implemented, including use of any developable sites, and demonstrates that the projects and programs will result in the achievement of the community's goals;

(ii) Proposed timelines for implementing identified projects and programs are appropriate for the 2-year plan;

(iii) The lead implementing entities are identified;

(iv) Innovative partnerships that ensure maximum community participation and project sustainability are identified;

(v) Proposed budgets are identified for each project or program, and costs and sources of funding are realistic;

(vi) Baselines and proposed measurable outputs are provided; and

(vii) The component exhibits innovation and creativity.

b. *Tax Incentive Utilization Plan (maximum points: 10).* This element addresses a significant aspect of the EZ initiative—the use of the business tax incentives available to designated Empowerment Zones to support economic revitalization. If the applicant includes developable sites, this element must include a statement of how developable sites will maximize the use of tax incentives. In evaluating this element, HUD will consider the extent to which the plan:

(i) Provides an effective strategy for integrating the new business tax incentives into the nominated area's business development efforts. The Round II business tax incentives include: Tax-Exempt Bond Financing, Increased Section 179 Deduction, Welfare-to-Work Credit, Environmental Cleanup Cost Deduction (i.e. "Brownfields Tax Incentive"), and the Work Opportunity Tax Credit. For a description of the tax incentives see IRS Publication 954, "Tax Incentives for Empowerment Zones and Other Distressed Communities."

(ii) Addresses the involvement of all appropriate segments of the community and the extent to which their participation will maximize the use of the business tax incentives;

(iii) Provides a realistic strategy for marketing the incentives; and

(iv) Exhibits innovation and creativity.

c. *Governance Plan (Maximum Points: 7).* This element describes how the strategic plan will be implemented. HUD will evaluate the extent to which:

(i) The proposed lead implementing entity, has or will have, the legal status and authority to receive and administer Federal funds;

(ii) The Governance Plan demonstrates that both the lead implementing entity and other key organizations participating in the implementation of the strategic plan have the capacity to implement the plan;

(iii) The proposed composition of governance boards, advisory boards, commissions or similar bodies that will manage strategic plan implementation is representative of the EZ area. The representation of residents and businesses, and the method of selecting members of such boards should provide a clear picture of the use of partnerships;

(iv) The relationships between the governance structure created and local governments, and other major community or regional organizations, such as a metropolitan planning organization, will strengthen the implementation of the strategic plan;

(v) The Governance Plan includes methods by which stakeholders within the Zone will be kept informed about Zone activities and progress in implementing the strategic plan, including an explanation of how the Governance Board will conduct its meetings in accordance with applicable open meetings acts. The community should utilize modern communication techniques and incorporate the Internet in order to enhance the communication and access to information among all stakeholders and participants;

(vi) The Governance Plan will ensure continuing community and grassroots participation in the implementation of the strategic plan and the governance of the Zone's activities; and

(vii) The plan exhibits innovation and creativity.

d. *Community Performance Assessment (maximum points: 3).* This element examines the methods the community will use to assess its own performance in implementing the strategic plan, and the process it will use to continually review the plan and amend it as appropriate. In evaluating community performance assessment, HUD will consider:

(i) The process the applicant will use to periodically evaluate its performance;

(ii) The process the applicant will use to modify its strategic plan based on the results obtained in (i);

(iii) The participation of stakeholders in (i) and (ii) above.

5. Strategic Planning Process Documentation (Maximum Points: 15)

This element provides a description of the process the community used to select the boundaries of the proposed Empowerment Zone, including any developable sites, and the process used to prepare the strategic plan. In evaluating this element, HUD will consider the extent to which the documentation:

a. Fully explains how the community participated in choosing the area, including any developable sites; and how the area ultimately nominated was selected over other areas considered;

b. Indicates the specific groups, organizations, and individuals that participated in the production of the plan, describes the history of these groups in the community, and describes their role in creating the plan;

c. Explains how participants were selected and provides evidence that the participants, taken as a whole, broadly represent the racial, cultural, gender and economic diversity of the community; and

d. Identifies two or three topics addressed in the plan that caused the most serious disagreements among participants, and a description of how those disagreements were resolved.

B. Quality of Commitments Made in Connection With the Strategic Plan (Maximum Points: 25)

In § 598.210 of the Interim rule, nominated areas are required to provide written assurances that the Strategic Plan will be implemented. In addition to the certification, it is essential that HUD is able to evaluate the breadth and quality of such commitments.

1. Resources Leveraged (Maximum Points: 10)

In evaluating this element, HUD will consider the extent to which the applicant has leveraged resources, such as funding and/or in-kind services from governmental entities, business, faith-based organizations, non-profit organizations, foundations, educational institutions, and other entities to implement the strategic plan.

2. Resource Commitments Documented (Maximum Points: 15)

The applicant must provide evidence of public and private sector commitments by including letters of commitment, memoranda of understanding or agreement, or other documentation indicating the nature of the participation and the financial and non-financial resources to be contributed. The letters or agreements must be signed by an official of the organization able to make such commitments.

V. Period of Designation

The designation period will commence on the date of designation and will continue for 10 years, closing at the end of the 10th calendar year, except:

1. When the nominating entities have specified an earlier date; or

2. When the designation is revoked by the Secretary.

VI. Findings and Certifications

A. Information Collection Requirements

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget on an emergency basis through August 31, 1998 and assigned control number 2506–0148. See the interim rule on "Empowerment Zones: Rule for Second Round Designations" published elsewhere in this issue of the **Federal Register** for additional information on this subject, including the opportunity to comment including information on the opportunity to comment on the burden of the information collections.

B. Catalog

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.244.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment for this Notice has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

D. Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

E. Documentation and Public Access Policy

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this Notice. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Ethics Related Questions.* Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

Dated: April 10, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–10131 Filed 4–14–98; 11:41 am]

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S. 750/P.L. 105–167

To consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes. (Apr. 13, 1998; 112 Stat. 40)

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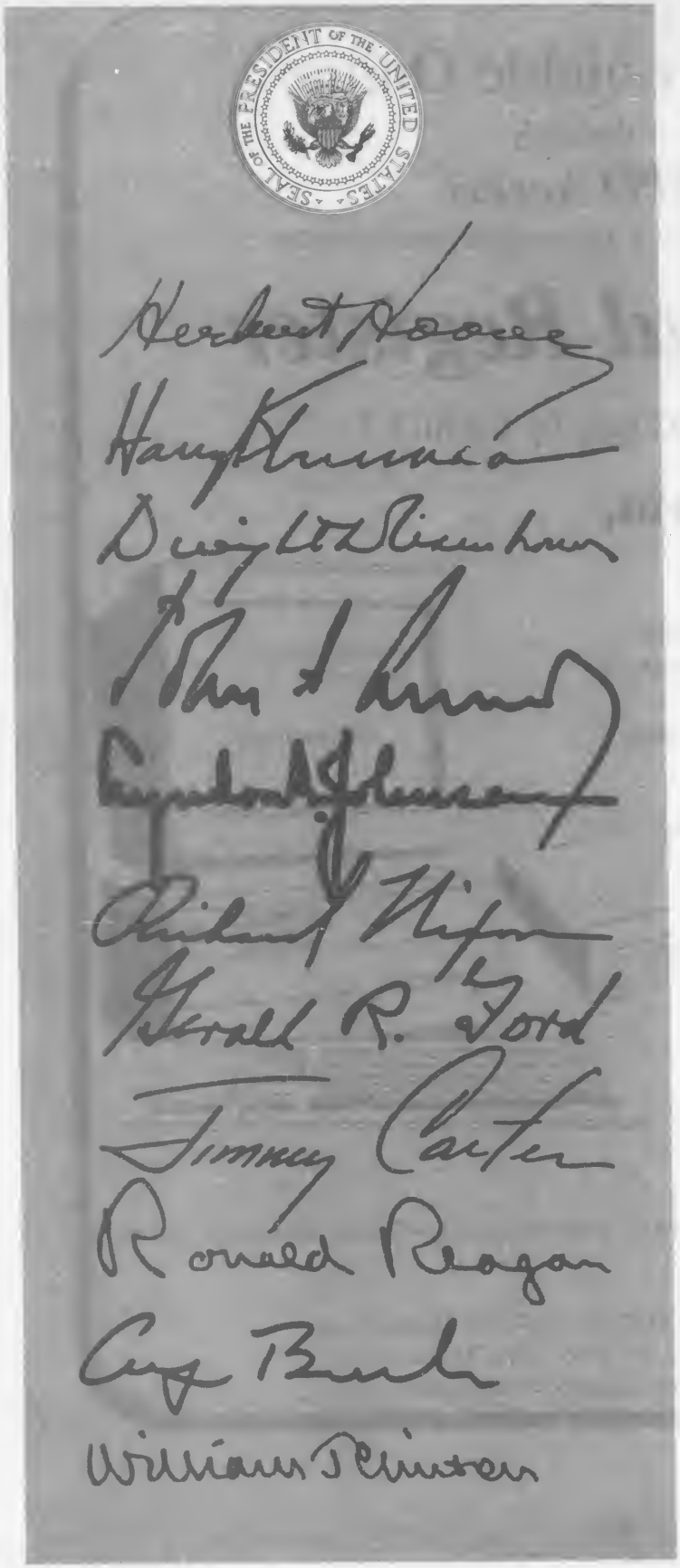

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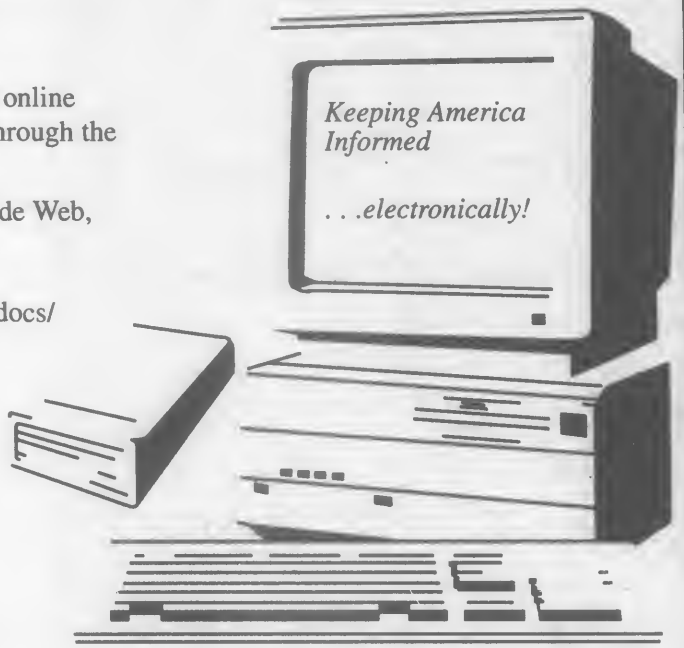

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